113-429

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 187.

SAMUEL T. MORGAN, ADMINISTRATOR *DE BONIS NON* OF SAMUEL D. MORGAN, DECEASED, SAMUEL T. MORGAN AND WILLIAM W. MORGAN, CHILDREN AND ONLY HEIRS AT LAW OF SAMUEL D. MORGAN AND TABITHA A. MORGAN, HIS WIFE, APPELLANTS,

vs.

JOHN C. HAMLET AND ALICE R. HAMLET, HIS WIFE, JAMES W. ABELL AND EMMA G. ABELL, HIS WIFE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED MARCH 20, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 187.

SAMUEL T. MORGAN, ADMINISTRATOR *DE BONIS NON* OF SAMUEL D. MORGAN, DECEASED, SAMUEL T. MORGAN AND WILLIAM W. MORGAN, CHILDREN AND ONLY HEIRS AT LAW OF SAMUEL D. MORGAN AND TABITHA A. MORGAN, HIS WIFE, APPELLANTS,

vs.

JOHN C. HAMLET AND ALICE R. HAMLET, HIS WIFE, JAMES W. ABELL AND EMMA G. ABELL, HIS WIFE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Exhibit—Bond of P. T. Harris to S. D. Morgan & Bro., Apl. 21, 1860	15	5
Answer	17	5
Exhibit—Letters of administration to Mrs. E. S. Morgan on estate of John G. Morgan, Aug. 6, 1875	25	7
Exhibit—Letters of administration *de bonis non* to John C. Hamlet on estate of John G. Morgan, Oct. 13, 1875	27	8
Exhibit—Administrators bond of John G. Morgan on estate of Samuel D. Morgan, Nov. 16, 1865	29	9
Exhibit—Letters of administration to John G. Morgan on estate of Samuel D. Morgan, Apl. 17, 1866	33	10
Replication	35	11

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Evidence of hearing	35	11
Testimony of N. H. Morgan	36	11
Hubbard L. Hart	39	13
James Holman	43	14
William Daniel	49	16
Wm. M. Chambers	70	24
Tabitha A. Morgan	80	28
Exhibit A—Letter of John G. Morgan to "dear brother," Mch. 19, 1861	91	32
Exhibit B—Letter of John G. Morgan to "dear brother," Apl. 20, 1861	93	33
Testimony of John W. Chambers	96	34
Joseph Woods	101	36
Jesse W. James	104	38
Wm. M. Morgan	108	39
Sam'l T. Morgan	113	41
Colvin Gellis	116	43
L. B. Sanders	127	47
Samuel Sanders	127	44
John McBride	131	48
Decree	133	49
Clerk's certificate	134	49

1 Be it remembered that on the 3rd day of September, 1879, came into the office of the clerk of the circuit court of the United States of the eastern district of Arkansas, Samuel T. Morgan, by Henderson & Caruth, Esqs., his solicitors, and filed therein their bill of complaint against John C. Hamlet *et al.*, which bill of complaint is as follows:

SAMUEL T. MORGAN, Adm'r *de bonis non* of Samuel D. Morgan, Samuel T. Morgan, William M. Morgan, children and only heirs-at-law of Samuel D. Morgan, and Tabitha A. Morgan, his widow,

vs.

JOHN C. HAMLET and ALICE R. HAMLET, his wife, JAMES W. ABELL and EMMA G. ABELL, his wife.

To the honorable the judges of the circuit court of the United States for the eastern district of Arkansas, in chancery setting:

2 Humbly complaining, your orators, Samuel D. Morgan, administrator *de bonis non* of the estate of his father, Samuel D. Morgan, deceased, Samuel T. Morgan, and William M. Morgan, as children and sole heirs-at-law of said Samuel D. Morgan, who died intestate, and Tabitha A. Morgan, his widow, all of whom are citizens of the State of North Carolina, exhibit their bill against John C. Hamlet and Alice R. Hamlet, his wife, and James W. Abell and Emma G. Abell, his wife, the said Alice R. and Emma G. being children and heirs-at-law of John G. Morgan, and all of whom are citizens of the State of Arkansas, and thereupon say:

That heretofore, to wit, in the year 1860, the said Samuel D. Morgan, who was a man of good estate, being desirous of engaging in the business of planting, but more particularly of assisting his brother, John G. Morgan, who was then bank-

3 rupt and out of business, formed a partnership with him, the said John G. Morgan, under the firm name and style of Samuel D. Morgan & Bro. In pursuance of such arrangements they came to the State of Arkansas in the year aforesaid and purchased a plantation of about eleven hundred acres of land in the county of Ashley, for which they agreed to pay the sum of fifteen thousand ($15,000), and did then and there receive title bond for the same from P. T. Harris, and the said Samuel D. Morgan did pay, out of his undivided funds, the said John G. being insolvent, the sum of six thousand dollars in cash. The understanding and agreement being between the brothers that the said Samuel D. Morgan was to be reimbursed for the said outlay, and receive credit therefor in the partnership accounts. Said title-bond was made and

4 executed to the said firm of S. D. Morgan & Bro., the original of which is filed herewith as a part thereof, and is now to the court shown. The said firm executed their joint notes for the unpaid purchase-money.

Thereupon the said Samuel D. Morgan, out of his individual means, stocked the said plantation, placing thereon eleven of his slaves to work the same, and a large number of mules, horses, wagons, &c., and all necessary agricultural implements, and putting

his brother, John G. Morgan, in full possession of said plantation to run the same for the joint benefit of the two, to wit, the said partnership of S. D. Morgan & Bro., returned to his home in North Carolina, where, the war soon thereafter becoming flagrant, he remained until he departed this life, to wit, on the 9th day of January, 1864. Said Morgan died intestate, leaving complainants, his heirs-at-law, and widow aforesaid. The said John G. Morgan occu-

5 pied and run said plantation for the said firm of S. D. Morgan & Bro. during the years 1860, 1861, 1862, 1863, 1864, and 1865. But craftily intending to cheat and defraud his said partner, he made no settlement whatever of the partnership accounts, nor did he account for or pay over to his said copartner any sum whatever, although these complainants are advised, and so state and charge, that the copartnership made large profits during all the years, that is to say, during the year 1860 the sum of $———, during the year 1861 the sum of $———, during the year 1862 the sum of $———, during the year 1863 the sum of $———, and during the year 1864 the said plantation, that are known to these complainants, 37 bales of cotton, which they state and charge brought a large sum of money, to wit, ten thousand dollars, and that during

6 the year 1865 the said plantation produced —— bales of cotton, which brought the sum of twenty-two thousand five hundred dollars, all of which moneys were received by the said John G. Morgan, and not one dollar of which was ever accounted for or paid over to Samuel D. Morgan in his lifetime, or to his representatives after his death, nor was there ever *ever* a partial settlement of the said partnership accounts. The said Samuel D. Morgan being dead, and his heirs-at-law infants and residents in a distant State, the said John G. Morgan conceived the wicked and *nefarious* design of swindling and defrauding these complainants, and in order to carry out the same, permitted a large accumulation of funds belonging to the said partnership in his hands, to wit, at least fifty thousand dollars, and although he had this large sum of money, refused to pay

7 off and discharge the balance of unpaid purchase-money due on the plantation as aforesaid on the title-bond of P. T. Harris, and suffered and permitted a suit to be brought to foreclose the lien on the same, which was done in 1865, and although said plantation had originally cost $15,000, $6,000 of which had been paid by Samuel D. Morgan, and had been greatly improved thereafter, suffered said plantation to be sold for the balance of said purchase-money, and thus pass out of the possession of himself and brother.

Your orators would further shew unto your honors, that in order to still further carry out his fraudulent designs, the said John G. Morgan took the said partnership funds belonging to the said firm of S. D. Morgan & Bro., and a part of which ought to have been ap-

8 propriated to the payment of said unpaid purchase-money and title thus made to S. D. Morgan and Bro., and fraudulently purchased large and valuable tracts of land in Chicot county, Arkansas, and the parish of West Carroll, in the State of Louisiana, and took the title to said lands on himself, completely ignoring the rights of these complainants.

Said lands are described as follows:

The "Ringo" plantation, in Chicot county, Arkansas, containing $813\frac{84}{100}$ acres, and other lands in township 17, range 3, township 18, range 2, township 19, range 2 & 3, and the places known as the "Mooney" place, and "Clanton" place, and the parish of West Carroll, in the State of Louisiana.

Your orators state that they are advised that, inasmuch as these said lands were purchased with partnership funds and with the fraudulent design as aforesaid, a trust results for their benefit,
9 and that the same being against equity and good conscience, a court of chancery will decree that the same are held in trust for the benefit of said copartnership.

Your orators would further show unto your honors that, further to carry out his said design of defrauding your orators out of their heritage, the said John G. Morgan went to the State of North Carolina, and by craft and false pretenses took possession of many valuable papers belonging to the estate of Samuel D. Morgan, among which were two promissory notes dated in the year 1859, for the sum of twenty-five hundred dollars each, executed by Hamilton Montgomery, of Drew county, Arkansas.

The said John G. Morgan fraudulently converted same to his own use and benefit, giving no account of the same in his admin-
10 istration or otherwise, or if he did not collect said notes, ought to have done so, because said Montgomery was perfectly solvent, and so remained for many years thereafter. Said notes bore ten per cent. interest, and principal and interest would now amount to a large sum, to wit, $———.

Your orators would further shew unto your honors, that the said Samuel D. Morgan died seised and possessed of valuable property in the town of Palatka, Florida, and that the said John G. Morgan went there in 1867, and fraudulently representing that he was a creditor of said Samuel D. Morgan, and exhibiting a pretended promissory note of said Samuel D. Morgan, had a local administration taken out, the property sold at a sacrifice, and the proceeds thereof, to wit, $1,000.00, paid over to him, which he converted to his own use and benefit, and never accounted for same in his administration, or any other way, to your orators.

11 Your orators would further show unto your honors that in the year 1865, in furtherance of his designs, and without any occasion therefor, the said John G. Morgan took out letters of administration of the estate on Samuel D. Morgan, under the order of the probate court of Ashley county, Arkansas, who thereafter had the burden of said administration until 1872, when it was closed.

Notwithstanding he pretended to render his accounts with said account, he, in direct and open violation of the laws in such cases made and provided, did not file any inventory or appraisement of said estate or in any way take possession of the assets belonging to said estate in his capacity of administrator, but converted the said assets to his own individual use, and refused to render to said administration any account of the joint property, as herein
12 stated, but the better to accomplish his wicked and uncon-

scionable purpose he made a false return of assets, well knowing that he was then in possession of at least sixty thousand dollars in cash arising from sale of cotton and other produce raised on said plantation.

Your orators would further show unto your honors that the said John G. Morgan departed his life in April, 1875, intestate, in Chicot county, Arkansas, leaving defendants as his heirs-at-law, & who are now in possession of the real estate above described, and a large personal estate which they claim by inheritance from John G. Morgan and John C. Hamlet in his administration *de bonis non*.

Defendants have ample estate inherited from said Morgan to respond to any decree your honor may render against said Morgan.

Your orators would further shew unto your honors
13 that Samuel T. Morgan, one of your orators became twenty-one years of age on the 8th day of September, 1876, and William M. Morgan became twenty-one years of age on the —— day of May, 1878. They never had a guardian, and it was never supposed they had anything; and that your orators never knew anything of the fraudulent practices of the said John G. Morgan, as above set out, until less than two years last passed, and that as soon as they received intimation of the same they instituted an investigation and started an attorney to Arkansas to examine into it in August, 1878, but on account of the prevalence of yellow fever said attorney, after reaching Arkansas, was unable to get to Chicot county and compelled to return, and in July, 1879, sent another attorney, who discovered for them the frauds above set out.

Your orators charge that all and singular the several acts
14 of the said John G. Morgan, as above set out, are fraudulent, unconscionable, and against equity and good conscience. Wherefore the- pray for process against the said several defendants named herein, and that an account be taken and stated between your orators, as heirs-at-law of Samuel D. Morgan, and the defendants, who are heirs-at-law of John G. Morgan, and that a trust be declared herein against the lands set out in this bill and claimed by defendants, which is descended estate in the hands of said heirs, and that the settlement of said administrator be opened if necessary, and the estate charged with such sums of money as may be legally chargeable, and that did in fact come into his hands as such administrator; and that your orators recover and have judgment for such sums as may be found due them, and that said lands
15 be charged with the amount, and if not paid by a day named by this court, then that the same be sold by order and decree of this court to satisfy same, and for all other such relief as to your honors may seem meet.

HENDERSON & CARUTH,
Solicitors for Comp'ts.

Walter Clark states that he is the attorney and agent of complainants, all of whom are absent from the State of Arkansas, and that the allegations of the foregoing bill are true as he very believes.

WALTER CLARK.

Subscribed and sworn to, this 3d September, 1879.

RALPH L. GOODRICH, *Clerk.*

EXHIBIT TO BILL.

Know all men by these presents, that I am held and firmly bound unto S. D. Morgan & Bro. in the sum of thirty thousand dollars, well and truly to be paid, as witness my hand and seal.

16 The condition of the above obligation is as follows:

The said P. T. Harris has sold unto S. D. Morgan & Bro. the land on which he now lives, including all that he purchased from the late Hosey George Dade; also, three hundred and twenty acres purchased of Dade & Jackson, known as the southwest quarter of section twenty, and the west half of northeast quarter of section twenty, and the east half of northeast quarter of section twenty, township seventeen, range four west; and the east half of southwest quarter, and the southwest quarter of the southwest quarter of section eighteen, township seventeen south, of range four west, and the north fractional half of southwest quarter of section nineteen, township seventeen, range four west, in all containing eleven hundred and fifty acres, for which the said S. D. Morgan & Bro. have

17 given the said P. T. Harris their notes for five thousand dollars on the 1st of January, 1861, and one for five thousand dollars due Jan. 1st, 1862, and also bills of exchange on Mess. Bradley, Wilson & Co., of New Orleans, for $5,586, due 21st January, 1861. Now, upon the payment of these obligations, if the said Harris shall make or cause to be made a deed in fee-simple, with full warranty to the said S. D. Morgan & Bro., or their assigns, then the above obligation is to be void; otherwise, it is to remain in full force and effect.

Said Harris exempts from sale for burial purposes, the yard at the home house, containing the graves of his family.

Given under my hand and seal, this April the 21st, 1860.

P. T. HARRIS. [SEAL.]

And on Oct. 14th, 1879, the answers of Hamlet and wife and Abell and wife were as follows:

18 The joint and several answer of John C. Hamlet and Alice R. Hamlet, his wife, and James W. Abell and Emma G. Abell, his wife, to the bill of complaint herein.

These defendants, saving all just exceptions to all defects in said bill contained, for answer thereto say:

That they admit that in 1860 Samuel D. Morgan and John G. Morgan purchased, or agreed to purchase, the lands named in the bill of one said Harris, with a view to carrying on the planting business on joint account, and that six thousand dollars of the purchase-money was paid on it, not by Samuel D. alone, as stated in said bill, but by the two equally.

They deny that John G. Morgan was insolvent.

They deny that Samuel D. Morgan out of his individual means stocked the plantation, but say, on information and belief, that each

partner contributed one half of all moneys used in buying
19 said lands and in providing the plantation with whatever was furnished for the purpose of carrying on the partnership business, with an agreement that all profits should be equally shared.

They admit that Samuel D. Morgan remained in North Carolina during the war, and that he died about the 9th day of January, 1864, leaving a widow and heirs, as stated in said bill.

They do not know of any partnership settlement having been made during that time. If none was made, they say none was demanded or asked for.

They deny that any clear money was made in the business in the years 1860 to 1865, inclusive. On the contrary, they say that owing to the war and its inevitable depredations and waste the said business resulted in a great loss, as might well be supposed.

They deny that John G. Morgan in any respect acted fraudulently, or had any intent to cheat his partner or the plaintiffs
20 in this or any other matter. They say that at the end of the war the lands bought from said Harris were not worth the balance of the purchase-money due on them. They were sold regularly under judicial proceedings, and they did not bring any sum in excess of said balance; and they were not bought by the said John G. Morgan, and he was not interested in the purchase under said judicial proceedings.

It is not true that he then had funds in his hands enough to pay off the balance of the purchase-money due on the lands belonging to said partnership. The truth is that he had no such funds in his hands, and that after the close of the war, in 1865, the balance of the partnership account was always in his favor, and it has always so remained ever since.

They deny that he ever bought any other lands with the partnership money. They admit that he bought the lands known as the "Ringo Plantation," in Chicot county, of the Samuel P. Wisa-
21 ger and another, for which he agreed to pay twelve thousand dollars; on which he paid four thousand dollars, and no more. This amount was paid out of his individual means.

Regarding the allegations made in said bill, as to the appropriation of a note on Hamilton Montgomery by said John G. Morgan, these defendants have no information except the charges made in said bill, and they deny the same, each and every one; and moreover, they say that ever since the war said Montgomery has been wholly insolvent, so that any such note was wholly worthless, if any such ever existed.

Regarding the charges made in said bill as to the proceedings of said John G. in Florida, defendants say that they never heard of any such matter until the reading of the bill herein. They believe the account of the matter given in the bill to be false; they therefore deny the same in all its particulars.

22 They admit that John G. Morgan administered on his brother's estate in Ashley county in 1865, and they say that said administration was regularly conducted and regularly closed in

1872. They deny that said John G., in said administration, conceded any of the assets of his ——, or converted any to his own use, or in any way acted fraudulently therein. On the other hand, they say that the proceedings of said administration fully set forth and show the real and true condition of the estate thus administered.

Defendants say that the said John G. Morgan died in April, 1875, leaving him surviving Emma S. Morgan, his widow, and defendants, Alice R. Hamlet and Emma G. Abell and Lula Morgan, an infant, his only children, who are all living now.

That letters of administration were issued on his estate by the probate court of Chicot county, in which county he lived
23 at the time of his death, on the 6th day of August, 1875, to said Emma S. Morgan, who continued to *continued to* act as administratrix of his estate till the 13th day of October, 1875, when she resigned, and defendant, John C. Hamlet, was appointed by the same court administrator *de bonis non* of said estate, as will be seen by copies of said letters hereinto filed, marked Exhibits A & B, and made part hereof.

Defendants say that there was no fraud on the part of said John G. Morgan to discover, and if there had been there was no difficulty in discovering it, as the records of the said probate court were open to public inspection.

For a further defence herein said defendants say that the said demands made in said bill were not authenticated and presented to the administratrix of said John G. Morgan, dec'd, according
24 to law, within two years of the granting of letters of administration on his estate; and said defendants demur to said bill, because—

1. There is no equity in the same.

2. Plaintiffs show no right to maintain this suit.

3. All necessary and indispensible parties herein are not made parties to this suit.

And the defendants, having fully answered, pray to be hence dismissed with their costs.

U. M. ROSE,
For Defendants.

Before me, this day, came John C. Hamlet, who, being duly sworn, made oath that the matters stated in the foregoing answer, so far as stated on his own knowledge, and so far as stated on information received from others, he believed them to be true.

J. C. HAMLET.

Subscribed and sworn to before me, this 26th day of Sep-
25 tember, 1879.

RALPH L. GOODRICH, *Clerk.*

EXHIBIT.

The State of Arkansas to all whom these presents shall come, Greeting:

Know ye, that whereas John G. Morgan, of the county of Pulaski,

died intestate, as it is said, on or about the — day ———, A. D. 1875, having at the time of his death personal property in this State, which may be lost, destroyed, or diminished in value if speedy care be not taken of the same: To the end, therefore, that the said property may be collected, preserved, and disposed of according to law, we do hereby appoint Mrs. E. S. Morgan, of the county of Chicot, administratrix of all and singular the goods and chattels, rights and credits, which were of the said John G. Morgan at the time of his death, with full authority to secure and dispose of
26 the said property according to law, and collect all moneys due said deceased, and, in general, to do and perform all other other acts and things which are, or hereafter may be, required of him by law.

In testimony whereof, I, H. W. Graves, clerk of the circuit court and *ex-officio* clerk of the court of probate in and for the county of Chicot aforesaid, have hereunto set my hand and affix the seal of said court, at said office, this 6th day of August, A. D. 1875.

[SEAL.] H. W. GRAVES, *Clerk.*

Filed and recorded August 6th, 1875.

H. W. GRAVES, *Clerk.*

I, Geo. T. Wilkinson, clerk of the circuit court and *ex-officio* clerk of the probate court in and for the county and State aforesaid, do hereby certify that the preceding page, and the above
27 writing on this page, contain a true and correct copy of the letters of administration issued to Mrs. E. S. Morgan on estate of John G. Morgan, deceased, as the same appear of record in my office, in Book of Letters of Administration "D," on page 41.

In testimony whereof I have hereunto set my hand and affixed my official seal, this the 3d day of October, 1879.

[SEAL.] GEO. T. WILKINSON, *Clerk.*

EXHIBIT.

The State of Arkansas to all persons to whom these presents shall come:

Know ye, that whereas John G. Morgan, of the county of ——, died intestate, as it is said, on or about the 30th day of July, 1875, having at the time of his death personal property in this State, which may be lost, destroyed, or diminished in value if speedy care be not taken of the same: To the end, therefore, may be col-
28 lected, preserved, and disposed of according to law, we do hereby appoint John C. Hamlet, of the county of Chicot, administrator *de bonis non* of all and singular the goods and chattels, rights and credits, which were of the said John G. Morgan at the time of his death, with full power and authority to secure and dispose of the said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts or things which are or hereafter may be required of him by law. In testimony whereof, I, H. W. Graves, clerk of the circuit court and *ex-*

officio clerk of the court of probate in and for the county of Chicot aforesaid, have hereunto set my hand and affixed the seal of said court, at said office, this 13th day of October, A. D. 1875.

[SEAL.] H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

Recorded and delivered Oct. 13th, 1875.

H. W. GRAVES, *Clerk*,
By GEO. T. WILKINSON, *D. C.*

29 I, Geo. T. Wilkinson, clerk of the circuit court and *ex-officio* clerk of the probate court, do hereby certify that the preceding page, and the above writing on this page, contains a true and correct copy of the letters of administration *de bonis non* issued to John C. Hamlet on the estate of John G. Morgan, deceased, as the same appears of record in my office in Book of Letters of Administration "D," on page 43.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 30th day of October, 1879.

[SEAL.] GEO. T. WILKINSON, *Clerk*,
By W. W. WILKINSON, *D. C.*

Administrator's Bond.

Know all men by these presents, That we, John G. Morgan and Robert Daniels, M. B. Fisher and L. B. Sanders, acknowledge
30 ourselves indebted to the State of Arkansas in the just and penal sum of two thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this November the 16th, 1865.

The condition of the above obligation is such, that if the above bounden John G. Morgan, administrator of all and singular the goods and chattels, rights and credits of Samuel D. Morgan, deceased, shall make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits of said deceased which have or may come to the hands, possession, or knowledge of him, the said John G. Morgan, or into the hands or possession of any other person for him, and the same so made shall return and exhibit in the office of the clerk of the court of probate for Ashley county, within sixty days from the date of the above obligation, and all and singular the goods and chattels, rights and credits of the de-
31 ceased which shall come to the hands, possession, or knowledge of him, the said John G. Morgan, shall well and truly administer according to law, and pay the debts of the deceased, as far as his assets will extend and the law direct; and further, to make or cause to be made just and true accounts of his administration, and make due and proper settlement thereof, from time to time, according to law, or the lawful order, decree, or sentence of any court having competent jurisdiction; and shall, moreover, well and truly do and perform all other matters and things touching such admin-

istration that are or may be prescribed by law, or enjoined by such administration by the lawful order, sentence, or decree of any court having competent jurisdiction, then the above obligation to be void and of no effect; otherwise to remain in full force and virtue.

In testimony whereof, we have hereunto set our hands and affixed our seals, the day and year first above written.

32 JOHN G. MORGAN. [SEAL.]
ROBERT DANIELS. [SEAL.]
W. P. FISHER. [SEAL.]
L. B. SANDERS. [SEAL.]

Signed and acknowledged in my presence Nov. 16th, 1865.
A. M. FILES.

STATE OF ARKANSAS, *County of Ashley:*

I, E. L. Thomson, clerk of the circuit court, and *ex-officio* clerk of the county and probate courts in and for the county and State aforesaid, hereby certify that the annexed within and foregoing instrument of writing is a true copy of the bond of John G. Morgan, as administrator of Samuel D. Morgan, deceased, as appears on record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of my office this 10th day of November, 1880.

E. L. THOMSON, *Clerk.*
By M. L. LAWSON, *D. C.*

33 *Letters of Administration.*

STATE OF ARKANSAS, *County of Ashley:*

To all whom these presents shall come, Greeting:

Know ye, that whereas Samuel D. Morgan, of the county of Ashley and State of Arkansas, died intestate, as it is said, on or about the — day of ——, A. D. 18—, having at the time of his death personal property in this State, which may be lost, destroyed, or diminished in value if speedy care be not taken of the same: To the end thereof that the said property may be collected, preserved, and disposed of according to law, we do hereby appoint John G. Morgan administrator of all and singular the goods and chattels, rights and credits which were of the said Samuel G. Morgan at the time of his death, with full power and authority to secure and dispose of said property according to law and collect all moneys due said deceased, and in general do and perform all other acts and things which are, or hereafter may be, required of him.

34 In testimony whereof, I, A. M. Files, clerk of the circuit court and *ex-officio* clerk of the probate court in and for the county of Ashley aforesaid, have hereunto set my hand and affixed the seal of said court at my office, this 17th day of April, 1866.

A. M. FILES, *Clerk.*

STATE OF ARKANSAS, *County of Ashley:*

I, E. L. Thomson, clerk of the circuit court and *ex-officio* clerk of

the county and probate courts in and for the county and State aforesaid, hereby certify that the annexed within and foregoing instrument of writing is a true copy of the letters of administration of Samuel D. Morgan, deceased, as appears in the record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court, this 10th day of Nov., 1880.

[SEAL.]

E. L. THOMSON, *Clerk*,
By M. L. LAWSON, *D. C.*

35

Replication.

And on Nov. 14th, 1879, replication to answer was filed as follows:

Complainants, by replication to answer herein, say that the matters and things in their bill set out were true as therein alleged, and that the matters and things set out in the answer herein are not true, save and except in a few immaterial particulars.

HENDERSON & CARUTH,
Solicitors.

On the final hearing the following depositions were read:

Depositions of N. H. Morgan et al.

On this the 10th day of February, A. D. 1880, personally appeared before me the plaintiffs, by Walter Clark, their attorney and solicitor, and the defendants, by their attorney and solicitor, Francis Downs; and thereupon the plaintiffs produced the following-named witnesses, who after being duly cautioned and sworn well and
36 truly to speak the truth, the whole truth, and nothing but the truth, NATHANIAL H. MORGAN, of the witnesses, deposes as follows, and saith as follows:

1st Question. What is your age and occupation?

Answer. I am aged forty-nine years; I am a resident of Palatka, Florida; and by occupation a physician.

2nd Question. How long have you resided in Palatka?

Answer. I have resided in Palatka twenty-six years or twenty-seven years.

3d Question. Were you acquainted with the late John G. Morgan; and, if so, did he reside in the town of Palatka; and, if so, between what years?

Answer. I was acquainted with the late John G. Morgan. He resided in the town of Palatka. He left here about the year 1859, and he resided here three or four years previous to that time.

4th Question. What was his pecuniary condition when he left here—was he solvent or insolvent?

Answer. He was supposed to be insolvent. He failed in business here, and left here with debts unpaid.

37 5th question. State whether John G. Morgan owned any real estate while residing in Palatka; and, if so, state whether

or not it had been sold before he left here for his debts; and, if so, state who became its owner?

Answer. I am unable to answer whether or not he had real estate, but he had a store which was sold out or transferred to Samuel D. Morgan.

Cross-examination by defendants:

1st X-question. What business was John G. Morgan engaged in while residing in Palatka?

2nd X-answer. He was engaged in a mercantile business, and was for a part of the time engaged in the business of getting out and shipping cedar timber.

3rd X-question. In your statements made in your direct-examination as to the financial condition of John G. Morgan when he left Palatka, did you make them from your own personal knowledge or from hearsay?

4th X-answer. Partly from my own personal knowledge, and partly from hearsay.

5th X-question. Did you know in regard to his financial
38 condition any more than the fact that he left without paying all his debts?

Answer. I was aware from common rumor that the firm of John G. Morgan and Arrow failed, and that the goods were turned over to Samuel D. Morgan, who had charge of the goods and sold them out. My office was opposite to the store of Morgan & Arrow, of which John G. Morgan was a member.

6th X-question. In your direct examination you state that the goods of John G. Morgan were sold to pay his debts?

Answer. I did not so state; I stated that I supposed his goods were sold to pay his debts.

7th X-question. Do you know of your own personal knowledge anything in regard to the nature of the transfer of John G. Morgan to Samuel D. Morgan; if so, state?

Answer. I do not know positive.

8th X-question. Was this Samuel D. Morgan a brother of John G. Morgan?

Answer. They held themselves out as brothers.

Redirect examination:

9th X-question. Is there any doubt as to John G. Morgan's failure while in Palatka?

39 Answer. I do not think there was any doubt.

10th X-question. When John G. Morgan left Palatka, did he possess the credit and reputation of a solvent man?

(Note.—This question is objected to on part of the defendant as leading.)

Answer. I do not think he did. My impression is that his credit was not very good when he left here.

Further the deponent saith not.

(Signed) N. H. MORGAN.

Deposition of Hubbard L. Hart.

HUBBARD L. HART, being duly cautioned and sworn well and truly to speak the truth, the whole truth, and nothing but the truth in the foregoing stated case, answers as follows to interrogatories:

1st question. What is your age, residence, and occupation; if you reside in Palatka, State of Florida, how long have you resided there?

Answer. I am fifty-two years of age; reside in Palatka, Florida, where I have resided since 1855; my occupation at present is steamboat owner and operator.

2nd question. Did you know John G. Morgan and Samuel D. Morgan, or either?

40 Answer. I knew them slightly.

Question. What was John G. Morgan's reputation and credit for solvency when he left Palatka in 1859?

Answer. Very poor, I think.

Question. Were you appointed administrator of the estate of Samuel D. Morgan, deceased, in the State of Florida; and if so, when?

Answer. I was appointed such administrator in 1867.

Question. What amount of assets came into your hands as such administrator, after paying costs and charges of administration?

Answer. I paid out as such administrator the sum of $625, net proceeds, in settlement of the estate.

Question. To whom did you pay over such proceeds?

Answer. I paid the money to John G. Morgan, through his attorney, Calvin Gillis.

Question. In what capacity, in what right, did John G. Morgan receive the money?

Answer. John G. Morgan received the money as a creditor of the estate by virtue of a promissory note he presented against the estate of Samuel D. Morgan, now on file in the probate
41 office in Palatka.

Question. Have you recently examined said note; and if so, what date does it bear?

Answer. It bears date 26th February, 1861, and bears indorsement date 15th April, 1861, for the sum of one hundred dollars; the amount of the note or due-bill was for $818.00. The note was in the form of a due-bill, so called. The same was filed in the said probate office 30th May, 1866.

Cross-questions:

1st cross. Do you know, of your own personal knowledge, anything of the financial condition of John G. Morgan in 1859?

A. No; only from general report. I know that the store, the general business, was closed.

2nd X-question. Your opinion of the financial condition of John G. Morgan was based, was it not, on hearsay, and not on your own knowledge?

Answer. I answer, my opinion of the financial condition of John G. Morgan was based both on my own knowledge and hearsay.

42 3rd X-question. State what facts you know, of your own knowledge, of his, John G. Morgan's, financial condition?

Answer. I do not know that I can state any facts of my own knowledge, but I would not have trusted him for anything.

4th X-question. Was there an administration on the estate of Samuel D. Morgan prior to the administration granted to you?

Answer. There was. Wiliam B. Stevens was appointed administrator prior to myself. I was appointed administrator *de bonis non*. Stephens was sheriff of Putnam county when he was appointed administrator of said estate, and I think he was appointed such administrator by virtue of his office as sheriff.

5th X-question: State when you paid said money to John G. Morgan or his attorney, and by what authority did you pay it?

Answer. I paid said money about the 9th of July, 1868. I paid it by the direction and authority of the probate or county

43 court of Putnam County, State of Florida, the court having the control of the estate of Samuel D. Morgan: paid the money in obedience to the order of said court.

Further deponent saith not.

H. L. HART.

Sworn and subscribed before me, this the 10th day of February, 1880.

(Signed) CALVIN GILLIS,
Notary Public in and for the State of Florida at Large.

Deposition of James Holman et al.

JAMES HOLMAN, being examined as a witness for the plaintiff, says:

Question 1. What is your name, age, residence, and occupation?

Answer. My name is James Holman; forty-seven years of age; reside in Putnam county, North Carolina, and my occupation a farmer.

Question 2. Are you acquainted with the parties in this suit?

Answer. I know the plaintiff and some of the defendants in this suit.

44 Question 3. Were you acquainted with the late John G. Morgan; if so, for how long a period?

Answer. I knew John G. Morgan, and I think my acquaintance with him began about 1857 [or] 1858, but I had heard of him before that time.

Question 4. Were you acquainted with the late Samuel D. Morgan; and, if so, for how long a period?

Answer. I knew Samuel D. Morgan about twenty years previous to his death.

Question 5. Did you know the reputation of John G. Morgan in 1860 and 1861 for solvency; if so, what was it?

Answer. His reputation in 1860, and previous to that time, was that he had nothing, and his brother was furnishing him.

Question 6. Do you know anything of the purchase of the Harris tract of land on Bayou Bartholomew, in Ashley county, Arkansas, by Samuel D. and John Morgan?

Answer. Yes; I was present when the purchase was made from Dr. Harris; I do not remember the initials.

45 Question 7. Who was present at that sale, at the time that bargain was made?

Answer. John Morgan, S. D. Morgan, Dr. Harris, and myself were all I remember.

Question 8. Do you know how the land was paid for?

Answer. S. D. Morgan gave an acceptance on Bradley, Wilson & Co., of New Orleans, but I do not remember the amount. This was the first payment. I do not remember how the other instalments were arranged.

Question 9. When did you see John G. and Sam'l D. Morgan, after that trip to Arkansas?

Answer. I met with S. D. Morgan frequently. He resided here in North Carolina. I saw John G. Morgan in 1865 or 1866, but I think 1866, in North Carolina, at my house in Preston county.

Question 10. Did you have any conversation with John G. Morgan while at your house with regard to the business of himself and brother in Ashley county, Arkansas.

Answer. I did.

Question 11. What did he state about the cotton raised on
46 the Harris farm while in his possession?

(Note.—Objected to on part of defendant as being leading and suggestive.)

Answer. I don't remember that he said anything about the cotton at all.

Question 12. About what other matters connected with his and Samuel Morgan's business did you converse with him, and what did he tell you about them?

Answer. I asked him how he was getting on farming, and he told me he had given up the Harris farm. That he had gone into other business, and in the course of the conversation he asked me if I remembered anything about the Montgomery notes. I told him I did. He says, I have them; that Mr. Laws, administrator of S. D. Morgan, deceased, had been direlect in his duties and had overlooked them, and, in saying so, placed his hand in his pocket, took out his pocket book, and drew from it some papers, saying, there are the Montgomery notes, and put his pocket book in his pocket. I then
47 asked him what had become — Montgomery. He answered that he had sold his possessions on Bayou Bartholomew, in Drew county, Arkansas, and had gone to Baton Rouge, and that *that* he thought he would be able to get something of *of* Montgomery on those notes.

Question 13. To whom were the Montgomery notes payable?

Answer. I do not know whether they were payable to S. D. Morgan or S. D. Morgan & Bro. I never saw the face of them.

X-ques. 1. Where did John G. Morgan reside in 1857 when you first became acquainted with him?

Answer. My understanding was that he lived in Florida, but of this I am not certain. His brother brought him to North Carolina, and I formed his acquaintance there.

X-ques. 2. How long did John G. Morgan continue to reside in North Carolina after you became acquainted with him?

Answer. While here he resided with his brother, S. D. Morgan, but they were engaged in the negro trade, and the greater
48 part of his time was spent South trading in negroes. I don't think he claimed any permanent residence in North Carolina. He settled in Ashley county, Arkansas, on the Harris place, in 1860, and that State has been his home until his death.

X-ques. 3. State whether or not John G. Morgan resided in Palatka, Florida, at any time in the year 1858 or 1859.

Answer. I do not know that he did.

X-question. 4. State whether or not John G. Morgan was engaged in business in Palatka, Florida, at any time in those years above mentioned.

Answer. I do not know.

X-question. 5. Did you know personally anything about the financial condition of John G. Morgan during the year 1859?

Answer. No.

X-question 6. You state in your direct examination that an acceptance was given on Bradley, Wilson & Co., of New Orleans, to make the first payment for the Harris place in Ashley county, Arkansas, by S. D. Morgan. Was that draft drawn by S. D. Morgan in his own name or that of himself and brother?

49 Answer. I do not know how it was drawn.

(Signed) JAS. HOLMAN.

Deposition of William Daniel.

WILLIAM DANIEL, being examined as a witness for the plaintiff, says:

Question 1. What is your name, age, residence, and occupation?

Answer. My name is William Daniel; age, 60 years; residence, Granville county, North Carolina, and occupation, a farmer.

Question 2. Are you acquainted with the parties to this suit?

Answer. I know the plaintiffs and some of the defendants.

Question 3. Were you acquainted with Samuel D. Morgan; and, if so, when did your acquaintance begin?

Answer. I knew him from about 1845 to the time of his death.

Question 4. Were you acquainted with John G. Morgan, his brother; and, if so, when did your acquaintance begin?

Answer. I knew him by reputation when a boy, but my actual acquaintance began about 1859.

50 Ques. 5. What was John G. Morgan's reputation for solvency in 1860?

Answer. What I know about it is this: I went to the Harris plantation, in Ashley county, Arkansas, in 1860, and spent a month there, and while there I learned from both the Morgans that John G. Morgan was insolvent; that he had lost everything in Florida.

Ques. 6. Do you know anything of the purchase of the Harris place by S. D. and Jno. G. Morgan?

Answer. They bought the place between them, and it was to be owned jointly when paid for. They were counting largely on the profits of the farm to pay off the debt.

Question 7. Do you know who paid the first installment on this land?

Answer. From what they told me while on a visit, the first payment was made by Samuel D. Morgan. I think I heard him say so in John G. Morgan's presence.

Question 8. How often were you on that Harris place after it had been bought by the Morgans?

51 Answer. I was there in 1860, 1861, and I think 1862, and I saw John G. Morgan at Poplar Bluff in Ashley county, Arkansas, in 1863.

Ques. 9. What business had you in that State?

Answer. I owned a farm near Poplar Bluff, in Ashley county, Arkansas, about four or five miles from the Harris place, owned by the Morgans.

Question 10. Do you know how many bales of cotton and what other produce were raised on the Harris place while it was owned and in possession of John G. and S. D. Morgan?

Answer. John G. Morgan told me he raised about eighty or ninety bales of cotton in the year 1860; in 1861, one hundred and twenty bales of cotton and twenty-five hundred bushels of corn; I am not certain about the crops of 1862 and 1863, and after considering the matter, I am certain I went with him from Poplar Bluff in 1863 to his home at the Harris place.

Question 11. On that occasion did you have any conversa-
52 with Mr. Morgan about his business; and, if so, state what, and especially about his cotton?

Answer. We had a great deal of conversation about cotton and the general condition of the country; also, about the best places for secreting cotton from the army, which was then in that vicinity; that he had some in the cane-break, and he told me he had hauled some across the Bayou Bartholomew, about three miles, for safe-keeping; he also had some at home at the time in the gin-house, and some in cribs and other houses about the place, and I think he had some in the gin-house not ginned.

Question 12. About how many bales do you think you saw?

Answer. It is all guess-work; but I think there were about between fifty and one hundred bales.

Question 13. Had the troops, either Federal or Confederate, made any raids through that section of the country up to the time
53 you were last at John G. Morgan's place?

Answer. My recollection is they had not.

Question 14. When and where did you see John G. Morgan after your last visit to his place?

Answer. In 1866, I think, in December, at Grand Lake, in Chicot county, Arkansas.

Ques. 15. In what business was he engaged at that time.

Answer. He was merchandizing with a Dutch Jew.

Ques. 16. Did you, at that time, have any conversation with him relative to the affairs of Samuel D. Morgan and himself in Ashley county, Arkansas?

Ans. Yes; we had some conversation about it. I asked him what he had done about the place. He said he had given up; that land was not worth more than three or four dollars per acre out there, and he would not pay the balance due on the land for the whole place. I made enquiry as to what had become of the cotton he had on the place. He said, By God he had sold it. "Well, John, 54 what did you get for the cotton?" His answer was, Twenty thousand dollars for it.

Ques. 11. Did he say anything about having lost any cotton?

A. There was something said about his having had a hell of a time floating some of it across the overflow.

Question 18. Did he tell you who floated that cotton across for him?

A. I do not think he did.

Question 19. Did you meet John G. Morgan on his visit to North Carolina?

Answer. I met him the second trip he made, which was 1868 or 1869. He came to my house and purchased a lot of manufactured tobacco.

Question 20. Did you, on that occasion, have any conversation with him in regard to the matters in Arkansas between him and his brother, S. D. Morgan?

Answer. I do not recollect that he did. He spoke of some papers at his brother's widow's place, and his business was to get some papers, there and he spoke of the Ruffin Pleasant bond, and 55 said was a good debt, but whether he collected it I never heard.

Ques. 21. Did he say anything about the Montgomery bonds?

(NOTE.—Objected to by the defendant, as being leading. Question withdrawn.)

Ques. 22. Did he say anything in regard to any other bonds; and, if so, what?

Answer. Either at my house or at Grand Lake, I cannot say which, he said he also had the Montgomery bonds.

Ques. 23. Where did he say he got those bonds?

Ans. I am not positive that he said that he had them, but he was speaking of coming to North Carolina to his brother's to get some papers, and mentioned that he thought these could be collected as the parties were good.

Ques. 24. What kind of papers did he speak of getting?

Ans. I cannot call to mind exactly what kind of papers he meant.

Ques. 25. What did he say he proposed to do with those papers he should get?

56 Answer. I don't know that he said particularly.

Ques. 26. Did he ever claim, in conversation with you, that his brother Samuel's estate was indebted to him?

(NOTE.—Question objected to by defendant, as being leading.)

Ans. I do not recollect that he did.

Ques. 27. Have you seen the record of the administration of John G. Morgan upon the estate of Samuel D. Morgan on file in the office of the clerk of the probate court of Ashley county, Arkansas?

Ans. I saw a portion of the returns.

Ques. 28. Did you see on file there any claims against the estate of Samuel D. Morgan; and, if so, of what did they consist?

Ans. I saw what purported to be a note from S. D. Morgan to John G. Morgan for thirty-four hundred and fifty dollars, dated February 26th, 1861.

Ques. 29. Were you acquainted with the handwriting of S. D. Morgan?

Ans. I was; I had many dealings with him, and have seen him sign his name numbers of times, and received letters from him.

57 Ques. 30. Was the body of that note or the signature to it in the handwriting of Samuel D. Morgan?

Ans. I do not think it was. It was an inferior handwriting to that of S. D. Morgan, and I could not see how Samuel D. Morgan owed that amount to John G. Morgan at that time, from the knowledge I had of the circumstances of each one, gained from themselves.

Question 31. Apart from the consideration of the financial standing of the two brothers, and from your knowledge of the handwriting of Samuel D. Morgan, are you not sure it was not his signature?

Ans. I believe it was not his signature.

Ques. 32. In Ashley county, Arkansas, what was John G. Morgan's part of the business; was he manager or overseer or partner with his brother, Samuel D. Morgan?

Ans. I learned from both the brothers, Samuel D. Morgan and John G. Morgan, that Samuel owned the negroes, mules, and farming implements; but I believe the cattle, about seventy-five

58 head, were bought by them jointly from Harris. Samuel D. Morgan made all the advances, and John D. Morgan attended the plantation, and that John received for his share one-half the profits.

Cross-examination:

X Ques. 1. State whether or not John G. Morgan and his brother, Samuel D. Morgan, were engaged together in any kind of business prior to the purchase of the Harris plantation in 1860.

Ans. They came from Florida to North Carolina together, but I heard of no copartnership between them until the purchase of the Harris place. Samuel D. Morgan's business was trading in negroes, and my impression is that John G. Morgan traveled with him as an assistant; but of this I will not be positive.

X Ques. 2. Do you know what business John G. Morgan was engaged in in Florida prior to his going to Arkansas?

Ans. I am not certain, but my impression is, obtained from a general conversation with him, that he carried on a little store in Florida.

X Ques. 3. Do you know at what point in Florida he was engaged in business?

59 Ans. I am not certain but I heard him speak of Palatka, Jacksonville, and the St. John's river, but cannot say at what point he was located.

X Ques. 4. During these conversations of John G. and Samuel D. Morgan with you was any mention made of a transfer of property of John G. Morgan in Florida to his brother, Samuel D. Morgan?

Ans. I heard Samuel speak of buying property in Florida, but never in conversation with his brother at all.

X Ques. 5. State whether or not you know how much was paid by Samuel D. Morgan in his first payment of the purchase of the Harris place, in Arkansas; and, if so, how much.

Ans. Samuel always spoke of it as six thousand dollars, paid through Bradley, Wilson & Co.

X Ques. 6. State whether or not it was paid out of moneys of Samuel D. Morgan in the hands of Bradley Wilson, of New Orleans, or by the acceptance of a draft by the said Bradley Wilson & Co., of New Orleans.

Ans. Samuel always spoke of it as paid by himself, but he did not say whether it was in currency, by note, or otherwise.

60 X Ques. 7. State whether or not the business of the plantation purchased by the Morgans in Arkansas was carried on with their merchants in New Orleans in the name of Samuel D. Morgan or Samuel D. Morgan & Bro.

Ans. I have seen supplies, such as mess pork, delivered at their landing, marked S. D. Morgan & Bro.

X Q. 8. How many hands did they have on their plantation in Arkansas in 1860?

Ans. About fourteen, I think; some being hands hired from Dr. Harris.

X Ques. 9. How many hands did they have on their place in 1861?

Ans. Ten or eleven went to the field.

X Ques. 10. Do you know what was done with the crop raised on the place in 1860?

Ans. It was sent to New Orleans, I think, but I am not certain.

X Ques. 10. Do you knew what was done with the crops that was made in 1861?

Ans. I think it remained on the place till the close of the war.

X Ques. 12. At what time of the year were you on the Morgan plantation in 1863?

Ans. I cannot remember exactly, but I remember that the Federal troops were encamped opposite Vicksburg, on the west
61 side of the river. I remained in Arkansas about a week or ten days. I think it was the first days of April that I returned.

X Ques. 13. Were you engaged in planting in Ashley county at that time?

Ans. I was.

X Ques. 14. How far was your plantation from that of the Morgans?

Ans. Some four or five miles.

X Ques. 15. State if you know, whether or not in 1863, after the surrender of Vicksburg, a general order was issued by the commander of the Confederate forces in that country, commanding all the cotton in that section to be burnt?

Ans. I heard that General Hindman had issued such an order, but I do know that the order was not enforced in every instance.

X Ques. 16. Was any cotton burned on your place in pursuance of such order?

Ans. There was; that that was in pens near the road; that in the gin-house was not burned.

X Ques. 17. State whether or not in 1864 a raid was made by the Confederate forces under General Osborne, down the Bayou Bartholomew in Arkansas, and that the Federal forces destroyed all or nearly all the cotton that they found?

62 Ans. I know that raid; they destroyed several gin-houses and some cotton.

X Ques. 18. Do you know at what time John G. Morgan sold the cotton for which [he] obtained the twenty thousand dollars?

Ans. I do not; from all the information I gained from him and others, he was engaged in getting cotton across the overflow to the Mississippi river just before the close of the war, and immediately after.

X Ques. 19. State whether or not John G. Morgan, just before the close of the war, was engaged in speculating in cotton, and getting it through to the Federal lines on the Mississippi river.

Ans. He was engaged in speculating in cotton to some extent, but there was more talk of his stealing it at that time; he was successful in getting cotton across to the Federal lines, and probably more so than anybody in that section.

X Ques. 20. Do you know in what kind of money he received the twenty thousand dollars; whether in United States currency, or what was known as Confederate money?

63 Ans. There was no explanation made by him to me about the currency, but the general report at the time was that all the cotton had been paid for in gold.

X Ques. 21. What was the name of the Dutch Jew with whom John G. Morgan was engaged in business when you saw him in 1865 or 1866?

Ans. I think it was Abe Cahn.

X Ques. 22. When did you see the papers on file in the office of the clerk of the probate court of Ashley county, Arkansas, in the matter of the estate of Samuel D. Morgan?

Ans. On the 10th of February, 1880.

X Ques. 23. What lead you to examine those papers?

Ans. Mr. A. N. Graham, council for the plaintiffs in this case, requested me to do so.

X Ques. 24. Was Mr. Graham with you on examination of the papers?

Ans. He was.

X Ques. 25. Did you at that time state your opinion of the signature of the note you then saw, purporting to be from Samuel D. Morgan to John G. Morgan?

Ans. I did not.

X Ques. 26. How long did you remain in Arkansas after that?

Ans. Two or three days, I suppose.

64 X Ques. 27. How long had you been there prior to the 10th of the present month?

Ans. I think about seven or eight days.

X Ques. 28. Were you summoned as a witness to testify in this suit while you were in Arkansas at that time?

X Ques. 29. Do you know whether or not the note you saw on file in Ashley county, purporting to be from Samuel D. Morgan to John G. Morgan, was ever probated or allowed as a claim against the estate of Samuel D. Morgan?

X Question 30. Did Samuel D. Morgan continue to reside in Arkansas from the time you first saw him in 1860 until the time of his death?

Ans. He did not. His home, at which he spent most of his time, was in Wake county, in North Carolina.

X Ques. 31. When did he return from Arkansas, after you saw him in 1860?

Ans. I saw him then, I think, in 1861 and 1862.

X Ques. 32. What was the state of the health of Samuel D. Morgan when you saw him last in Arkansas?

Ans. His health was very bad.

X Ques. 33. At the time you saw this note in the office of the 65 clerk in Ashley county did you have any writings or letters of S. D. Morgan, which you knew to be in his own handwriting, to compare with the handwriting of that note?

Ans. I did not.

X Ques. 34. Did you have any written correspondence with Samuel D. Morgan after he returned from Arkansas?

Ans. I think not.

X Ques. 35. In what manner, then, would you have been familiar with the handwriting of Samuel D. Morgan after his return from Arkansas?

Ans. I don't know that I saw any of his writing after his return.

X Ques. 36. Do you swear positively that the signature to the note you saw purporting to be from Samuel D. Morgan to John D. Morgan was not in the handwriting of Samuel D. Morgan?

Ans. I swear, to the best of my knowledge and belief, it was not.

X Ques. 37. Is not that belief of yours founded more on your understanding of the circumstances of the two brothers in 1860, when you conversed with them at their place in Arkansas, than upon your knowledge of the handwriting of Samuel D. Morgan?

66 Ans. Both circumstances had something to do with the forming of my opinion in regard to the handwriting of S. D. Morgan.

X Ques. 38. Is your eyesight as good and clear to you as it was fifteen or sixteen years ago?

Ans. Very little difference, with the assistance of glasses.

X Ques. 39. Do you know personally of the business affairs between John G. Morgan and his brother, Samuel D. Morgan, after your visit with them on their place in Arkansas in 1860?

Ans. I know nothing definite or to change my opinion as expressed in direct examination.

X Ques. 40. Was Mr. Samuel D. Morgan's family with him while in Arkansas?

Ans. I think not.

Redirect examination:

Ques. 1. State whether you heard Samuel D. Morgan say in the presence of John G. Morgan that he paid six thousand dollars of the purchase-money for the plantation in Ashley county, Arkansas.

67 Ans. It was the subject of conversation on several occasions, and I knew that John G. Morgan was present on one occasion.

Ques. 2 Did John G. Morgan deny that Sam'l D. Morgan had paid this sum, or claim that he, John G. Morgan, had paid any part of this money?

Ans. He did not.

Objected to, as being leading and suggestive.

Ques. 3. What was your relations with John G. Morgan and Samuel D. Morgan?

Ans. My relations with them were very intimate. I had known Samuel D. Morgan from boyhood, but had lost sight of John G. Morgan for several years, though I had seen him occasionally. They both talked very freely with me about their business.

Ques. 4. To whom did the hands belong who were on the plantation in 1861?

Ans. They were principally the hands that were there in 1860, and my information in 1860 was that they were Samuel D. Morgan's negroes; the Harris negroes were not there in 1861. There were ten or eleven hands who went to the fields, estimated to be *estimated to be* equal to eight number one hands.

68 Ques. 5. Do you know whether or not the cotton on the Morgan place was burned in pursuance of the order given after the fall of Vicksburg?

Ans. From what I heard there was very little cotton burned at that time, and from information gained from John G. Morgan I know his cotton was not burned; seed cotton was mostly burned.

Ques. 6. State if John G. Morgan said anything to you about the raid of the Federal troops under Gen. Osborne down the Bayou Bartholomew in 1864, in regard to the destruction of cotton and other things; if so, what?

Ans. In 1866 I had a conversation with him about that raid and was teasing him about losing his hat and coat, and after talking awhile he said a squad of Federal troops started towards his gin house, but after going fifty or sixty yards, came back fell in with the column, and went on without burning the cotton, and that the Federal troops did not burn any cotton for him. He was congratulating himself on his good luck at not having any — his cotton burned on that occasion.

Ques. 7. State what was your business in Hamburg, in
69 Ashley county, the 10th of February, 1880, at the time you examined those papers.

Answer. I was attending court there as defendant in a suit now pending in the circuit court of Ashley county, in which Julia A. Daniel as plaintiff and T. L. & Wm. Daniel as defendants.

Ques. 8. From what did you gain your knowledge of Samuel D. Morgan- handwriting?

Ans. From frequent business transactions with him, having seen him sign his name and having received numbers of letters from him during fifteen years previous to his death.

Ques. 9. Did Samuel D. Morgan ever reside in Arkansas; and what was his occupation from 1859 to the time of his death?

Ans. He never resided in Arkansas; his occupation was speculating and farming, sometimes trading in negroes from North Carolina to Arkansas. He manufactured tobacco five years at his home in Wake county, North Carolina.

Ques. 8. Are you not able to state from your knowledge of the handwriting of Sam'l D. Morgan, and from dealings and long associations with him, that the signature to the note that has been
70 referred to is not in the handwriting of Samuel D. Morgan?

Ans. I am nearly of the opinion that it — not his handwriting.

Recross-examination resumed:

Ques. 1. Were there any peculiarities to the signature to the note referred to, whereby you were able to form your opinion that the signature was not in the handwriting of Samuel D. Morgan? If so, state what those peculiarities were.

Ans. It was a larger and clumsier handwrite than Samuel D. Morgan was accustomed to use, and the paper looked like it had been tampered with. It had the appearance of having been wet with water to give it the appearance of an old paper. Upon consideration I will correct my answer to X Question number 26, page 20, by stating that I examined those papers at Hamburg on the 10th of February and left the next morning.

(Signed) WM. DANIEL.

Deposition of William M. Chambers.

WILLIAM M. CHAMBERS, being examined as a witness for
70½ the plaintiff, says:

Ques. 1. What is your name, age, residence, and occupation?

Ans. My name is William M. Chambers; my age, 68 years; Person county, North Carolina, my residence; and by occupation a farmer.

Ques. 2. Are you acquainted with the parties to this suit?

Ans. I am acquainted with all except James W. Abell.

Ques. 3. State if the parties to this suit are any relations of yours; and, if so, what?

Ans. I am grand-uncle of the Morgans, and of Hamlet and his wife, and of Emma G. Abell; their grandmothers were my sisters.

Ques. 4. Were you acquainted with Samuel D. Morgan and John G. Morgan; and, if so, state when your acquaintance began?

Ans. I was acquainted with them both from childhood; I raised them; at ten years of age John G. Morgan left my house, and resided with my brother in Alabama for ten or twelve years; I next saw him on his return from Florida after he was married.

71 Ques. 5. With whom did he return from Florida?

Ans. His brother, S. D. Morgan.

Ques. 6. Where did he spend the most of his time after he came from Florida?

Ans. He was frequently at my house, but he spent most of his time with his brother at his home in Wake county.

Ques. 7. What was the condition of John G. Morgan, financially, after his return from Florida?

Ans. He was a very poor man; both he and his brother Sam told me that Sam payed his traveling expenses from Florida to North Carolina.

Ques. 8. How long did John G. Morgan remain in this country after he came here?

Ans. I think between nine and twelve months in the State; I am not positive as to the length of time.

Ques. 9. In what business was John G. Morgan engaged while in North Carolina after his return from Florida?

Ans. I do not know that he had any particular business, except to aid his brother in attending the farm and about the negroes

72 his brother bought, he (his brother) being at that time trading in negroes.

Ques. 10. Do you know anything of a partnership existing between John G. Morgan and Samuel D. Morgan relative to the negro trading?

Ans. I know nothing in particular about it, only in the case of two negroes I let them have just before they went South; I sold two negroes to them as Morgan and Brother.

Ques. 11. Why did you sell them to S. D. Morgan & Brother instead of S. D. Morgan; and state any conversation which occurred between you and those parties at time of said sale?

Ans. My motive for selling as I did was that I had every confidence in Sam'l D. Morgan, and he told me at the time he wanted to give his brother, John G. Morgan, a chance.

Ques. 12. Was John G. Morgan a man of any means at that time?

Ans. I did not consider his credit good for twenty-five dollars?

Ques. 13. Do you know in what business John G. Morgan was engaged in Florida?

Ans. I do not.

73 Ques. 14. Do you know, or do you remember, when John G. Morgan and his brother, Samuel D. Morgan, left for Arkansas?

Ans. I do not remember the time exactly.

Ques. 15. Do you know anything of the business transactions of Samuel D. Morgan and John G. Morgan in Ashley county, Arkansas, between 1860 and the time of their death?

Ans. Nothing, except what I have heard from the parties themselves.

Ques. 16. When did you next see John G. Morgan, after he left for Arkansas in 1859?

Ans. I don't think I saw him till 1865 or 1866, the first or second year after the war closed.

Ques. 17. Did you have any conversation with him relative to his and his brother's transactions in Ashley county, Arkansas; and, if so, what?

Ans. I did; I asked him what he was doing out there; he told me he had given up the plantation, but had reserved cotton enough to bring him twenty or twenty-five thousand dollars; he said he was at that time engaged in merchandizing.

74 Ques. 18. Was he in the army during the war?

Ans. I do not know.

Ques. 19. Where did he say the cotton came from, from which he received this money?

Ans. He said he made it on the plantation in Ashley county, Arkansas; that the land was not worth the balance due on it, owing to decline in price of land, and he had given it up.

Ques. 20. Did you have any conversation with him at that time in regard to notes and bonds and accounts due Samuel D. Morgan in Arkansas and other States in the Southwest?

Ans. He came from Mrs. Samuel Morgan's house in Wake county to my house in Pierson county, and he told me he had gotten some papers from Mrs. Morgan that he thought would be of value when he got South; that he thought he could collect them.

Ques. 21. Did he state what he intended to do with the money if collected?

Ans. He told me if he could collect it he would return the money to the estate of Samuel D. Morgan.

75 Ques. 22. Do you know the amounts of the notes he had, or the names of the parties to these notes?

Ans. I don't remember.

Ques. 23. Did you see John G. Morgan on his second trip to North Carolina after the war?

Ans. I did not.

Cross-examination:

X Ques. 1. Where did John G. Morgan — when he left North Carolina after his first return from Florida?

Ans. He went South to Alabama, Mississippi, and other States; I don't know exactly where.

X Ques. 2. Do you know whether John G. Morgan was doing business in Palatka, Florida, upon the St. John's river, at any time during the years 1858 and 1859?

Ans. I do not.

X Ques. 3. When did you next see John G. Morgan after they left to go to the States you have just mentioned?

Ans. I did not see him again till the first or second year after the war.

X Ques. 4. Where was this conversation had between you
76 and John G. Morgan refer-ed to?

X Ques. 5. Was any other person present during the conversation between you and John G. Morgan at the time?

Ans. No person, except some of the family.

X Ques. 6. What members of your family were present at that time?

Ans. John Chambers, Betty Chambers, and Virginia Chambers. I am not able to say whether or not my wife was present, but probably she was.

X Ques. 7. Are those members of your family that were present at that conversation still living; and, if so, where do they reside?

Ans. Bettie lives in Middlesex county, Virginia; John and Virginia live in Pierson county, North Carolina.

X Ques. 8. Can you tell what year that was, and what time of the year?

Ans. The first or second year after the war, and, I think, in the spring of the year.

X Ques. 9. Do you remember any other fact during his
77 visit that impressed his visit on you?

A. I do not.

X Ques. 10. In that conversation did he tell you anything about the amount of cotton raised on the plantation owned by himself and brother in Arkansas?

Ans. I don't recollect that he stated any amount.

X Ques. 11. Are you positive that he stated that the cotton for which he had received twenty or twenty-five thousand dollars was raised on the plantation in Arkansas?

Ans. I think he told me it was.

X Ques. 12. Do you know whether at that time letters of administration had been taken out in North Carolina upon the estate of Samuel D. Morgan; and, if so, who was the administrator?

Ans. I think Mr. William Laws was the administrator.

X Ques. 13. Did you ever communicate that fact to the administrator of the estate, or to any of the members of the family of Samuel D. Morgan?

Ans. I do not recollect that I did.

78 X Ques. 14. Do you know whether at the time Mr. John G. Morgan visited you in North Carolina he purchased any manufactured tobacco; and, if so, from whom?

Ans. He did from Green D. Satherfield, of Roxboro, Pierson county, North Carolina.

Redirect examination:

Ques. 1. How long did John G. Morgan stay at your house when he visited you after the war, on the occasion to which you have referred?

Ans. He stayed a day and a night, and the next day I went with him to Roxboro to purchase tobacco.

Ques. 2. Are you positive in regard to the time John G. Morgan was at your house?

Ans. I am certain it was two years after the war, but am not certain as to the time of the year; it was latter part of the winter or in the spring of the year. He told me he had just come from Mrs. Samuel D. Morgan's.

Ques. 3. In what business was John G. Morgan engaged on the trip made South to which you have referred, after his first return from Florida?

79 Ans. He went with his brother, Samuel D. Morgan, who was engaged in the negro trade.

Ques. 4. What was it that made you recollect that he told you he had received twenty or twenty-five thousand dollars for cotton from the plantation in Arkansas?

Ans. I had a desire to know what his business was and how he had succeeded in the world. Having raised him, I was interested to know his prospects, &c.

Ques. 5. Are you positive that he told you that the cotton for which he received this money was raised on the plantation in Arkansas?

Ans. Yes; I am positive he said he had saved cotton enough from the farm to bring twenty or twenty-five thousand dollars.

Ques. 6. Why did you not communicate the fact that John G. Morgan had told you he had sold twenty or twenty-five thousand dollars' worth of cotton from the plantation in Arkansas to the administration, or some members of the family of Samuel D. Morgan?

80 Ans. We live some forty miles apart, and I was so sure he had told the whole matter to the administration and the family of Samuel D. Morgan, as he had just come from there, I did not think it was necessary. I do not think I have seen Mr. Laws, the administrator, but once since the sale of S. D. Morgan's personal property during the war, and I have not seen the members of S. D. Morgan's family more than once in five years since that time.

(Signed) W. M. CHAMBERS.

Deposition of Tabitha A. Morgan.

TABITHA A. MORGAN, being examined as a witness for the plaintiff, says:

Ques. 1. State your name, age, residence, and occupation.

Ans. Tabitha A. Morgan; my age, forty years; residence, Wake

county, North Carolina; occupation, a farmer; I am the widow of Samuel D. Morgan and mother of plaintiffs, William M. and Samuel T. Morgan; I am the daughter of Mark Tate, who lived in Wake county, North Carolina.

81 Ques. 2. Are you acquainted with the other parties to this suit?

Ans. I know John Hamlet, but none of the other defendants.

Ques. 3. Are you acquainted with John G. Morgan, brother of Samuel D. Morgan; and, if so, when did you make his acquaintance?

Ans. I became acquainted with him in December, 1854.

Ques. 4. In what business was he engaged at that time?

Ans. He was not in any business,

Ques. 5. What was his financial condition at that time?

Ans. I do not know, but I don't think he had anything more than his horse and buggy.

Ques. 6. How long did he stay in North Carolina at that time, and where did he go from here?

Ans. He did not stay more than two weeks; he went to Florida with his brother, S. S. Morgan, and Durell Morgan.

Ques. 7. When did you see John G. Morgan again?

Ans. In the summer of 1857 or 1858, when he returned from Florida.

Ques. 8. What was his financial condition at that time?

82 Ans. His reputation was that he was insolvent.

Ques. 9. How long did he remain in North Carolina at that time?

Ans. He remained until October or November, but in the meanwhile made a trip to Florida, and brought back his wife.

Ques. 10. When did he go from your house, and in what capacity?

Ans. He went South with Mr. S. D. Morgan with a gang of slaves. Mr. S. D. Morgan furnished all the money and agreed to give John G. Morgan one-half the profits on the slaves he should sell. Mr. S. D. Morgan was also engaged at the same time in the same business with B. G. Rogers, of Wake county, North Carolina. S. D. Morgan returned in about five months and S. D. Morgan in about six months.

Ques. 11. How long did John G. Morgan remain after his return from the South?

Ans. About one month, and he then took his wife to visit her relations in Florida, and returned to North Carolina some time during the summer. Some time in the fall of that year he went with

83 his brother, Samuel D. Morgan, with a gang of slaves South again. After that time I did not see him until after the war ended.

Ques. 12. Do you know anything of the purchase of the tract of land in Ashley county, Arkansas?

Ans. I heard Mr. Samuel D. Morgan speak of it, and John G. Morgan told me after the war that he could not pay his interest in the land, and that he could not collect the debts due Samuel D. Morgan to pay his interest in the land, and he had concluded to give it up.

This was in December, 1865, when John G. Morgan first visited me after the war.

Adjourned this case at 4 o'clock p. m. to 9 o'clock a. m., to-morrow, February 26th.

FEBRUARY 26TH, 1880.

Examination of Mrs. TABITHA A. MORGAN continued:

Ques. 13. What is the age of your son, William M. Morgan, one of the plaintiffs in this case; when was he born?

Ans. William M. Morgan was born the 8th day of September, 1855.

Ques. 14. What is the age of your son, Samuel T. Morgan, one of the plaintiffs in this case; where was he born?

84 Ans. Samuel T. Morgan was born on the 15th of May, 1857.

Ques. 15. When did your husband, Samuel D. Morgan, die?

Ans. He died on the 9th day of January, 1864.

Ques. 16. State any conversation by you, or any members of your family in your presence with John G. Morgan, at your house, in Wake county, on the first visit made to you after the war, in regard to his or his brothers' business in Arkansas and other southern States.

Ans. He told me the Yankees had taken all the cotton, horses, wagons, and stock, his own riding horse, and the mules, and that he had not saved anything. He said he could not collect any of the notes which were due, Mr. Samuel D. Morgan had left some notes in his hands for collection, and that there were others here that he wanted, and he wanted to look over the papers and take them out, and that he would collect them if possible, but he thought it doubtful.

Ques. 17. Did you then let him have access to the papers?

85 Ans. I did; and he looked over them all and took such as he wanted.

Ques. 18. Who was the administrator on Samuel D. Morgan's estate in North Carolina?

Ans. William Laws, and when he took charge of Samuel D. Morgon's estate he declined to take charge of the papers referring to Samuel D. Morgan's affairs in the southwest, and left all such papers at my house.

Ques. 19. Are those the papers you gave to John G. Morgan to look over?

Ans. They are.

Ques. 20. State if you remember how many papers, and what kind John G. Morgan took out.

Ans. I do not exactly remember the number or amounts, but he took a great many, and some of them I know were notes.

Ques. 21. What did he say he would do with them, and what with the proceeds?

Ans. I do not remember that he said anything about that.

Ques. 22. Did he ever tell you that he had qualified as administrator on the estate of Samuel D. Morgan in Arkansas?

Ans. No; he did not.

86 Ques. 23. Did he ever send to you any money arising from the estate of Samuel D. Morgan?

Ans. He did not; he never gave me any while here, nor send me any from the South.

Ques. 24. Did he claim that Samuel D. Morgan owed him anything?

Ans. He did not.

Ques. 25. Where did John G. Morgan go from your house at that time?

Ans. He said he was going to a great many places, and, among others, to Mount Tirzah, in Person county, and to his uncle's, William Chambers, also in Person county. I think he was at my house between five and six weeks.

Ques. 26. When did you next see John G. Morgan?

Ans. It was either in 1869 or 1870. He came to my house and said he was on his way to New York.

Ques. 27. How long did he remain at your house?

Ans. Only a day or two at that time. He went from my house to William Daniels', came back and spent the night, and went on to New York by way of Durham the next day.

Ques. 28. Have you seen John G. Morgan since that time?

Ans. I have not.

87 Ques. 29. Did you ever have any conversation with John G. Morgan in regard to the affairs of Samuel D. Morgan in Palatka, Florida?

Ans. I did, on both visits to my house after the war. He talked about his brother's affairs in Florida, and said that property was selling so low that he thought it was best to let it alone until it brought a better price.

Ques. 30. What kind of property did he speak of his brother's owning there?

Ans. Town lots.

Ques. 31. Did he ever tell you that letters of administration on his brother's estate there had ever been taken out, and that the property had been sold?

Ans. He did not. On his last visit he spoke of those lots not being worth anything, and he thought it best not to sell them.

Cross-examination:

X Ques. 1. You stated in your direct examination that John G. Morgan went South with your husband with a lot of slaves,
88 and that John G. Morgan was to have one-half of the profits made of the slaves sold by him. Do you know whether John G. Morgan made anything on that trip?

Ans. I do not know of my own knowledge.

X Ques. 2. Do you know of your own knowledge anything of the business affairs between John G. Morgan and your husband, in Arkansas, from 1860 up to the time of your husband's death?

Ans. I do not.

X Ques. 3. You state that in 1865, on John G. Morgan's first visit to you, that he conversed with you about your husband's property

in Palatka, Florida; did you hear at that time what kind of property it was, and how much there was of it?

Ans. It was town lots in Palatka, but I do not remember the number of lots.

X Ques. 4. You stated that you were in possession of the papers pertaining to your husband's business in the South and Southwestern States; were there among those papers any deeds or other papers showing the property owned by your husband in Palatka, Florida?

89 Ans. Yes; there were papers, but I do not know whether there were any deeds or not.

X Ques. 5. Did you, at any time, look after paying any taxes on that property in Palatka, or take any steps towards securing you an interest in that property, or the interests of your husband's estate in it?

Ans. No, I never paid any tax on it; I only advised with others about it, and as John G. Morgan said it would not bring anything, I thought it best to let it stand till the children got large enough to atttend to it.

X Ques. 6. You state in your direct examination that letters of administration were taken out on your husband's estate in North Carolina by William Laws; do you know whether or not that administration has been closed; and, if so, when?

Ans. I do not know when the estate was closed, but William Laws made a final return previous to his death.

Redirect-examination:

Ques. 1. Was there any guardian appointed for your husband's property?

Ans. There was not.

90 Ques. 2. Did you tell John G. Morgan that William Laws had declined, as administrator, to assume any control over the papers relating to the affairs of Samuel D. Morgan in the South and Southwest?

Ans. I did.

Ques. 3. Why did you let John G. Morgan take those papers?

Ans. Because he was my husband's brother, and having implicit confidence in him, I believed he would give my children their share in my husband's property.

Ques. 4. Do you know to whom the negroes on the plantation in Arkansas belonged; and if so, how do you know it?

Ans. My understanding was they belonged to Samuel D. Morgan; a part of them I know belonged to him; the most of them were negroes that had been on our plantation in Wake county four or five years; some of them were taken out of the drove.

Letters marked Exhibit "A" and Exhibit "B," shown to the witness, and were as follows:

91 EXHIBIT "A."

PORTLAND, ARKANSAS, *March 19th*, 1861.

DEAR BROTHER: I drop you a few lines which will inform you

that we are all well at present, but some of the negroes have been having chills. I am getting on with the work tolerable well. Have planted about fifty acres of corn some 8 or 10 days ago, and would have been done planting, but the land was and is yet too wet to plough through. We have not had much rain here yet, and we had a big frost last night, and it is quite cold to-day. The corn has not come up yet, but it is time. I think I can just see a little of it a coming.

I have not received a dollar since you left here, nor have not heard a word from Trotter, at Monticello, yet, and I would like to hear from —, for I need some money. I have not heard from New Orleans since you left, so I do not know what the last cotton shipped there sold for. I have shipped 85 bales, and have some over on hand yet. The young man that I hired to work while you was here has
92 left me. Said he could not make the trip; that is, he could not work. He stayed half month. I mean the one that I hired for the yard, and the one that I got for one month got sick yesterday, and is going, and I don't know whether he will come back to finish his month or not. I went to Hamburg last week and give in our taxes, but do not know the numbers of the land, and the tax-book had no numbers on it, and I found by the Hamburg paper the piece on the other side of the bayou had been advertised for sale for taxes—back taxes for four years—but I saw the sheriff and stopped it. He could not tell the numbers of the land. Dr. Harris has been paying taxes on 1,300 acres of land, none of it numbered; so I give in the same number of acres, & promised to get the numbers and send to him, but I will have to have the bond from Dr. Harris to get them, which title you have, and if you have not sent the negroes on here, you will please send it to me, and if you
93 have sent them, you must send me a copy of the numbers. I think it best not to send the bond by mail, for fear it might get lost, and if not recorded, which it should have been done some time since. Nothing more. Yes, I send you power of attorney to get what is coming to me from grandpa estate, which you will please get and put it in a negro, if you think it prudent. My love to all the family and Mr. Tate's family. Write soon.

Your brother. (Signed) JOHN G. MORGAN.

EXHIBIT "B"

Which is as follows:

PORTLAND, ARKS., *April* 20, 1861.

DEAR BROTHER: I drop you a few lines, which will inform you that we are all well at present, but have been getting on very slow in the way of farming, for the weather has been so very bad that everybody is behind in planting. I will get done planting of cotton in two more days. The weather has been dry for a week now, and the ground is just getting in order to plough good. I have about 10
94 or fifteen acres of corn to plant yet, which I will plant as soon as the water gets off the land. The balance of the corn is up and a very good stand. It is just about the height it was last spring.

when you bought the place. It would look fine, but it has been somewhat drowned by the rains, and I tell you the crab grass is as thick as it can be—almost too thick to grow. I am, and have been, looking for those hands now for some time, but have heard nothing from them yet; so if you have not sent them, send them soon, or it will be no use to send them at all. The bayou is still very high, but I think it is falling very slowly; four feet more would throw it out of the banks. I do not know how the Mississippi river is; I have not been there since you left here. I never saw as much rain in my life as I have this spring, and I think we will have some dry weather this summer. Have not received ac. sales of any of the cotton yet. Nothing more. My love to all. Hope you have a good crop, as you have a good overseer this year, as you informed me you
95 were attending to your own business. Write soon.

Your brother,

(Signed) JOHN G. MORGAN.

Ques. 5. Have you ever seen these letters marked Exhibit "A" and Exhibit "B;" and, if so, when, and under what circumstances?

Ans. I have seen them at home; they were found by me among the papers of Samuel D. Morgan after his death.

Ques. 6. Are you acquainted with the signature of John G. Morgan at that time, and are the letters and signatures his?

Ans. Yes; the letters and signatures are in his handwriting.

Recross-examination:

Re-X Ques. 1. Do you know of your own knowledge what arrangements were made between your husband, Samuel D. Morgan, and John G. Morgan in reference to the hands on their place in Ashley county, Arkansas.

Ans. I do not of my own knowledge.

(Signed) TABITHA A. MORGAN.

96 *Deposition of John W. Chambers.*

JOHN W. CHAMBERS, being examined as a witness for the plaintiff, says:

Ques. 1. What is your name, age, residence, and occupation?

Ans. My name is John W. Chambers; my age is thirty-two years; my residence is in Puson county, North Carolina, and by occupation a farmer.

Ques. 2. Are you acquainted with the parties in this suit?

Ans. I know the plaintiffs, and John Hamlet, one of the defendants.

Ques. 3. Were you acquainted with Samuel D. Morgan and John G. Morgan; and, if so, state when your acquaintance began?

Ans. Just before the war I became acquainted with John G. Morgan, and about the same time I formed the acquaintance of Samuel D. Morgan.

Ques. 4. Were you any kin to Samuel D. Morgan and John G. Morgan?

Ans. I am son of their uncle, William Chambers.

Ques. 5. Do you know anything about the transactions between Samuel D. Morgan and John G. Morgan relative to their plantation in Ashby county, Arkansas.

97 Ans. I know nothing except what John G. Morgan told at my father's house after the war.

Ques. 6. How long was this after the war?

Ans. It was the first or second year.

Ques. 7. Where had John G. Morgan come from to your father's house.

Ans. He told me he had just come from the home of Samuel D. Morgan's widow, in Wake county.

Ques. 8. State what conversation occurred between John G. Morgan and your father in your presence and with you relative to the affairs of himself and his brother Samuel D. Morgan in Arkansas.

Ans. We were at the dinner table and father asked him how he was getting on with his and Sam's farm out in Arkansas. He said that he had sold twenty or twenty-five thousand dollars' worth of cotton. Father then asked him if he and his brother had settled up. He replied no; I have some papers belonging to Sam yet to collect out there.

Ques. 9. What did he say in regard to the land?

Ans. I do not know; I was called off from the table just

98 at that time, and did not hear any further conversation between them.

Ques. 10. Who were present beside yourself and father?

Ans. Two sisters, Bettie and Virginia.

Ques. 11. How long did John G. Morgan stay at your father's?

Ans. One day and two nights.

Ques. 12. Did you yourself have any conversation in regard to the cotton with him?

Ans. He and I were talking about farming; he said if I would go out West with him he would show me how to raise cotton; I told him no, I would remain here with my father; I asked him if he lost anything when the Yankees came through; he said he lost only four or five bales of cotton and a horse or two.

Ques. 13. Where did this conversation with him take place?

Ans. That night in the parlor.

Ques. 14. Where did John G. Morgan go after he left your father's house?

Ans. I think he said he was going on to New Yoak.

Ques. 15. Did you ever see John G. Morgan after that?

99 Ans. No; I did not.

Cross-examination:

X-ques. 1. Can you state what time of the year in which John G. Morgan was at your father's house when this conversation took place?

Ans. First part of January or February.

X-ques. 2. Can you state what year that was?

Ans. First or second year after the war.

X-ques. 3. How old were you then?

Ans. Eighteen or nineteen years of age, I think.

X-ques. 4. What year do you understand the war to have closed?

Ans. I disremember now what year it closed.

X-ques. 5. You have no certain knowledge have you what year it was when John G. Morgan was at your father's house?

Ans. It was the first or second year after the war.

X-ques. 6. Did John G. Morgan state whether or not the cotton which brought twenty or twenty-five thousand dollars was raised on their plantation in Arkansas?

Ans. He said it was raised on their farm.

100 X-ques. 7. Did he say anything about how many bales he raised upon the place?

Ans. I did not hear him say.

X-ques. 8. When he invited you to go west and offered to teach you how to make cotton, did he tell you whether or not he was still carrying on the farm in Arkansas?

Ans. He said he was carrying on a farm out there.

X-ques. 9. When he spoke to you of his losses in Arkansas during the war, are you sure you have stated all that he said were his losses in that State?

Ans. As near as I can recollect now.

X-ques. 10. Did he speak of any other business he was engaged in besides farming and planting?

Ans. No, not at that time.

X-ques. 11. State whether or not you or your father, William M. Chambers, are in any manner interested in the result of this suit?

Ans. No, sir.

X-ques. 12. Do you know whether it is understood or expected by the members of your father's family, or your father, that in case the plaintiffs in this suit gain anything from it, that your

101 father will be reimbursed for the moneys advanced by your father to Samuel D. Morgan?

Ans. I do not.

Re-direct examination:

Ques. 1. If on the visit referred to, did not John G. Morgan say that he was also engaged in merchandizing?

Ans. I think he did.

Ques. 2. Are you interested, either directly or indirectly, in the results of this suit?

Ans. No, not to my knowledge.

(Signed) JOHN CHAMBERS.

Deposition of Joseph Woods.

JOHN WOODS, being examined as witness for the plaintiffs, says:

Ques. 1. State your age, name, residence, and occupation.

Ans. My name is Joseph Woods; I am 69 years of age; my residence is in Orange County, North Carolina, and by occupation a farmer.

Ques. 2. Are you acquainted with the parties to this suit?
102 Ans. I know the plaintiffs and John Hamlet, one of the defendants.

Ques. 3. Were you acquainted with Samuel D. Morgan and John G. Morgan; and, if so, state when your acquaintance began.

Ans. Yes; my acquaintance extends from their cradle. I formerly lived in Peson county, North Carolina, and was a schoolmate with their mother.

Ques. 4. Do you know anything of the solvency or insolvency of John G. Morgan from 1855 to the time he left North Carolina?

Ans. He told me he was very poor just before he left North Carolina for Arkansas. This was either in 1859 or 1860.

Ques. 5. Do you knowanything of property owned by Samuel D. Morgan in Palatka, Florida?

Ans. Only from what I heard from Samuel D. Morgan himself.

Ques. 6. When did Samuel D. Morgan first go to Florida with slaves, if you recollect?

Ans. I can't tell the precise year, but I think it was just previous to his marriage. I know this from the circumstance that we were together at a negro sale just after his leaving his home for
103 Florida, and we were teasing him for staying two nights at the house of his intended wife. He then had with him two or three negro carpenters. His home was at that time near Mt. Tirzah, in Peson county.

Ques. 7. What was John G. Morgan's reputation for insolvency in 1855 and 1859?

Ans. I don't remember to have heard much said about it, but he was regarded as having nothing.

Ques. 8. Did you ever hear John G. Morgan say anything in regard to his interest, with his brother, in the slave trade; and, if so, state time and place, as near as you can.

Ans. I was at S. D. Morgan's house and John G. and his brother were both there. On leaving the house, John G. Morgan walked out with me to where my horse was. He stated that he had been to Alabama, and had been to Florida, and that his brother had offered him an interest in some slaves, if he would go South or Southwest in the sale of them. He was going to accept the proposition,
104 from the fact that he had not been able to make a decent living, and asked my opinion as to his taking an interest. My reply to him was, that my experience in trading was, he could make money if he had no deaths among the negroes. The profits on ten or twelve would not more than make up the loss of one. This was in 1858, 1859, or 1860, but am not positive. I had been on a visit to my sister, who lived two miles beyond the residence of S. D. Morgan, in Wake county.

Cross-examination:

X Ques. 1. Did you ever see John G. Morgan again after that conversation referred to by you?

Ans. I never did.

X Ques. 2. Do you know, of your own knowledge, anything of the results of that trip with the slaves?

Ans. I do not.

(Signed) JOSEPH WOODS.

Deposition of Jesse W. James.

JESSE W. JAMES, being examined as a witness for the plaintiffs, says:

105 Ques. [1.] What is your name, age, place of residence, and occupation?

Ans. My name is Jesse W. James. I am 42 years of age. I reside in Orange county, North Carolina, and by occupation a farmer.

Ques. 2. Are you acquainted with the parties to this suit?

Ans. I am acquainted with the plaintiffs, but not with the defendants.

Ques. 3. Were you acquainted with Samuel D. Morgan and John G. Morgan? And, if so, state when your acquaintance began?

Ans. I became acquainted with Samuel D. Morgan in 1856 or 1857, and with John G. Morgan in 1858.

Ques. 4. Where were you living in 1857?

Ans. At Red Mountain, in Orange county, North Carolina.

Ques. 5. Where were you living in 1858, 1859, and 1860?

Ans. In March, 1858, I went to live on Sam'l D. Morgan's plantation, in Wake county, North Carolina, and lived there until the fall of 1860.

Ques. 6. State, if you know, John G. Morgan's reputation for solvency during the years 1858 and 1859.

Ans. His reputation was that he was not worth anything.

106 Ques. 8. What was your business on Morgan's plantation when you lived there?

Ans. I worked one year as a farm hand, the next year working at the carpenter trade helping to build his factory; and the last year, I had charge of the drove hands on the plantation, or hands bought in Richmond in his trade.

Ques. 9. What was John G. Morgan's business then—in what capacity?

Ans. He did not seem to have any particular business.

Ques. 10. On what terms were you with John G. Morgan?

Ans. Our relations were very intimate.

Ques. 11. What was your financial condition at that time?

Ans. I was a poor man.

Ques. 12. What was John G. Morgan's condition as compared with yours?

Ans. I do not think he was in any better condition than I was; we were both quite poor.

Ques. 13. State your reason for thinking his condition was no better than yours.

Ans. From what he told me, and his general appearance.

107 We sometimes got on sprees together.

Ques. 14. Who furnished the money to get on those sprees?

Ans. I spent my own money. He told me the money he had he got from his brother Sam, and he said I was better off than he was, because he had to get his money from his brother; and he was always particular to conceal from his brother any knowledge of his sprees.

Ques. 15. Do you remember where John G. Morgan came from when you first saw him at Samuel D. Morgan's plantation?

Ans. He came there in the summer, after I came there, and said he came from Florida.

Ques. 16. How long did he remain there?

Ans. Until the fall.

Ques. 17. Where did he go then, and in what capacity?

Ans. He went with his brother South, with a gang of negroes.

Ques. 18. When did he return from the south?

Ans. I do not know exactly, but somewhere between five and seven months.

Ques. 19. How long did he remain, and when did he leave again?

Ans. He remained until the fall, and left again with his
108 brother with a gang of negros.

Ques. 20. After John G. Morgan left with the second gang of negroes when did you see him again?

Ans. I don't think I ever saw him again.

Ques. 21. Do you remember to have seen Mr. Joseph Woods at Mr. Samuel D. Morgan's house while John G. Morgan was there?

Ans. Yes; I have seen him there several times.

Cross-examination:

X Ques. 1. State whether or not John G. Morgan had any interest in the slaves taken South by himself and his brother, Samuel D. Morgan, at the times you have mentioned.

Ans. I do not know.

(signed) JESSE his x mark W. JAMES.

Witness:

JAMES SOUTHGATE.

Depositions of William M. Morgan.

WILLIAM M. MORGAN, being examined as witness for the plaintiff, says:

Ques. 1. State your name, age, residence, and occupation?

Ans. My name is William M. Morgan; my age, twenty-
109 four years; my residence, Durham county, North Carolina, and by occupation a clerk.

Ques. 2. What is the date of your birth?

Ans. September the 8th, 1855.

Ques. 3. Who are your parents?

Ans. Samuel D. Morgan and Tabitha A. Morgan.

Ques. 4. What interest have you in this suit?

Ans. I am one of the plaintiffs.

Ques. 5. Have you ever had a guardian of your property?

Ans. I have not.

Ques. 6. How many brothers and sisters have you?

Ans. One brother, Samuel T. Morgan, and no sisters.

Ques. 7. Were you acquainted with John G. Morgan, your uncle?

Ans. Yes; I knew him.

Ques. 8. Do you know anything of the business relations between your father and your uncle, John G. Morgan?

Ans. I knew that they were in business together, engaged in farming together in Ashley county, Arkansas.

Ques. 9. Have you ever heard John G. Morgan say anything about the farm in Arkansas; and, if so, what, and at what time?

Ans. I [have]; December, 1865, or January, 1866, I heard
110 him say they had a lot of cotton there, and that the cotton was destroyed by the Yankee army during the war.

Ques. 10. Did he say that it had all been destroyed by the Federal army?

Ans. Yes.

Ques. 11. State any other conversation you had with him in regard to his and your father's affairs in that State.

Ans. He said he had given the property back to the first owners of the plantation, as the land was not worth the balance due on it. I think I heard him say that he could not collect anything that was due out there to my father's estate; that he had administered on the estate, but could not collect anything.

Ques. 12. Did he at that time claim that your father's estate was due him anything?

Ans. He did not.

Ques. 13. How long did he remain at your mother's house at that time or on that visit?

Ans. I am not certain, but I think about two months.

Ques. 14. Where did he go from your mother's house?

Ans. He went to William Chambers', and I think to William Daniels', but I am not certain.

111 Ques. 15. When did you see John G. Morgan again?

Ans. In 1870 or 1871.

Ques. 16. Where did you see him?

Ans. At my mother's house in Wake county.

Ques. 17. Did you have any conversation with him at that time about your father's matters in Florida?

Ans. I do not think I did.

Ques. 18. Have you since the death of your father received any money from John G. Morgan as arising from your father's estate?

Ans. Not one penny.

Cross-examination:

X Ques. 1. Was this conversation with your uncle had with yourself directly or with others in your presence?

Ans. I think my mother asked the question, but am not positive.

X Ques. 2. Did he state anything in regard to any other losses on the plantation in Arkansas besides the cotton?

Ans. Yes; he stated that the Yankees had gotten the teams, &c.

X Q. 3. Did he state whether the cotton was burned by the Yankee army or was taken by them?

112 Ans. I think he said it had been burned by the Yankee army.

X-Ques. 4. How old were you at the time of this conversation?

Ans. About 10 years old.

Redirect examination:

Ques. 1. Did you have any conversation with your uncle on his last visit to your mother's house relative to the affairs in Arkansas?

Ans. I think he made the same statement about the cotton and the personal property being destroyed out there.

(Witness was here shown letters marked Exhibit "A" and Exhibit "B" and heretofore filed as part of the evidence.)

Ques. 2. Have you ever seen these letters before; and, if so, when?

Ans. I have seen them among may father's papers at home.

Ques. 3. Are you acquainted with the handwriting of John G. Morgan; and, if so, from what did you derive your knowledge?

Ans. I am; I have seen his letters to myself and to the members of my mother's family.

Ques. 4. Are the letters and the signatures to them in his handwriting?

Ans. They are.

113 (The witness desires to state in explanation to interrogatory No. 11, page 110, that he did not intend to say that John G. Morgan had told him that he had qualified as administrator upon Samuel D. Morgan's estate, but in general terms that he had the management of it as his partner.

(Signed) W. M. MORGAN.

Depositions of S. T. Morgan.

SAMUEL T. MORGAN, being examined as witness for the plaintiffs, says:

Ques. 1. State your name, age, residence, and occupation?

Ans. My name is Samuel T. Morgan; my age, twenty-two years; residence, in Wake county, North Carolina, and by occupation a farmer and trader.

Ques. 2. What interest have you in this suit?

Ans. I am one of the plaintiffs.

Ques. 3. Who were your parents?

Ans. Samuel D. Morgan and Tabitha A. Morgan.

Ques. 4. Are you acquainted with the defendants in this suit?

Ans. I know John Hamlet slightly; I do not know the others.

114 Ques. 5. Do you know anything of the business relations between John G. Morgan and your father, Samuel D. Morgan?

Ans. Not of my own knowledge; I have learned from John G. Morgan and others that they were engaged in farming in Arkansas. I can remember, when quite young, my father taking some negroes out to the plantation in Arkansas.

Ques. 6. Do you know John G. Morgan; and, if so, state when your acquaintance began?

Ans. I suppose I saw him when he was at my father's place in 1859, but my first recollection of him was when he came to my mother's house the first or second year after the war; this was about Christmas.

Ques. 7. How long did he remain during that visit?

Ans. I do not remember.

Ques. 8. When did you see him again?

Ans. Some time between 1868 and 1870; I cannot state positively the year.

Ques. 9. Did you have any conversation with him on either of those visits relative to his and your father's affairs in Arkansas; and, if so, what?

Ans. I had no conversation myself; I heard him talking to my mother about it; I heard him say all of my father's property
115 out there was destroyed by the Yankee army; I remember his going to my father's drawer and taking out some papers, but what papers they were I do not know, being very small at the time.

Ques. 10. Did you hear him say anything about his having qualified as administrator of your father's estate in Arkansas?

Ans. I did not; the first I ever heard of it was a few years ago, when I employed an attorney to investigate the matter.

Ques. 11. Have you ever had a guardian for your property?

Ans. I have not.

Ques. 12. Have you ever received any money from John G. Morgan arising from your father's estate in Arkansas, Florida, or elsewhere?

Ans. I have not received one cent from him.

Ques. 13. Who qualified as administrator on your father's estate in North Carolina?

Ans. William Laws.

Ques. 14. Did he take charge of your father's entire estate?

Ans. He did not; I heard him refuse positively to have
116 anything to do with the estate in the Southwest and South; he was talking to my mother at the time.

Cross-examination:

X-ques. 1. Do you know whether the administrator on your father's estate in North Carolina ever received anything from the administrator of your father's estates in the other States, either Arkansas or Florida?

Ans. I have examinad Mr. Laws' returns, but I do not recollect seeing any entries of any collections of moneys received from any of those estates?

X-ques. 2. Has the administration on your father's estate in North Carolina been closed?

Ans. William Laws made a final return before his death, but left some judgments in favor of the estate uncollected, and I qualified as administrator *de bones non*, and I am still the administrator *de bones non* of the estate in North Carolina.

(Signed) SAM. T. MORGAN.

Deposition of Calvin Gillis.

Statement.

117 My name is Calvin Gillis; I am aged about sixty years. I reside in Palatka, State of Florida, where I have resided since 1852–3; I am an attorney-at-law; soon after my residence in Palatka, Florida, made the acquaintance of Samuel D. Morgan and John G. Morgan; they were brothers; Samuel D. Morgan was here first; he did not reside here permanently; would remain a month or two occasionally; he was a general trader or speculator; operated in the business of real estate, slaves, and everything which promised profit; John G. Morgan came here a year or two after and engaged in the red-cedar business; that is, getting out, buying, and selling red cedar; he was in partnership part of the time with one Arnow; John G. Morgan seemed to be set up and knocked down at the pleasure of Samuel D. Morgan; these events took place always when the latter was here; John G. Morgan failed, as also his partner, Arnow, and before and at the time John G. Morgan left here he was insolvent, apparently, and, as well as I remember, claimed
118 to have failed in business, and, besides, he seemed not to have much means or property. I was pretty well informed of the business affairs of Samuel D. Morgan and John G. Morgan. I had occasion to look after them in a business way. In the year 1866 John G. Morgan appeared here in Palatka and represented that his brother, Samuel D. Morgan, was dead, and died owing John G. Morgan a great deal of money, more than his, S. D. Morgan's, — was worth. I think he stated that he had exhausted, or had more than enough demands to exhaust, the property of S. D. Morgan in North Carolina, and Arkansas, and Mississippi, or in North Carolina, and Arkansas, or Mississippi. I do not recollect whether he named both the latter States; he named either Mississippi, Arkansas, or Louisiana, one or more, in connection with North Carolina, where he stated that Samuel D. Morgan had an estate. At the instance of John G. Morgan, I applied for administration of the estate of
119 Samuel D. Morgan to be granted for the benefit of John G. Morgan, as a creditor of the estate of Samuel D. Morgan. John G. Morgan exhibited and left with me two promissory notes executed by Samuel D. Morgan, payable to John G. Morgan, and such proceedings were had in the administration of the estate of Samuel D. Morgan here; that his real estate was sold to about the amount of nine hundred dollars, and the proceeds paid to John G. Morgan, less the expenses of the administration—say expenses $100. This was not more than enough to pay off the less of the two notes. John G. Morgan carried off, or I sent to him, the larger note. I acted as the attorney of John G. Morgan in the collection of this money, and the statement of the condition of the estate of Samuel D. Morgan, made to me by John G. Morgan, was previous to my engagement as attorney, as I remember, but it was part of the communication he made to me in the same sitting and conversation when he engaged me as attorney and council in his behalf to procure administration as aforesaid and to collect his money.

120 (NOTE.—Defendants' council excepts to so much of this statement as may be held by the court, as privileged communications between client and attorney, and not proper as testimony.)

I submit to the court whether or not so much of the above as relates to the administration of Samuel D. Morgan is not privileged communications, and if so, I reserve the right to have it suppressed by the court, and ask that it shall be. I know outside of my relation as an attorney that John G. Morgan did procure administration to be taken on the estate of his brother here, and that he received, as I recollect, about $800 proceeds from the sale of lots of land here. These things were notorious and public; not private or confined to myself.

The estate of Samuel D. Morgan here was declared to be insolvent by the judge of probate of Putnam county, which court had jurisdiction of the administration of of the estate, and it was
121 declared insolvent at my instance on behalf of John G. Morgan on his representation, and the evidence of the said notes which I held.

Further I say not.

(Signed) CALVIN GILLIS.

In testimony whereof, the said attorneys above have hereunto subscribed their hands in my presence, this 20th day of April, 1880.

(Signed) BENJ. PUTNAM CALHOUN,
Council for Plaintiffs.
WM. THOMPSON,
Council for Defendants.

THE STATE OF FLORIDA, *County of Putnam, Town of Palatka:*

On this, the 20th day of April, A. D. 1880, I, Calvin Gillis, a notary public in and for the said State at large, duly appointed by the Governor of the said State, and duly sworn and commissioned as such notary public, do hereby certify under my hand and notarial seal that the foregoing statements and proceedings were re-
122 duced to writing by me, and after being reduced to writing were carefully read over by me in the hearing of the said Calhoun and said Thompson, the said attorneys, and we all respectively approved of the same as therein appearing, and we signed as above set forth and appearing, and thereupon I proceed to seal up this testimony anddispose thereof as agreed by said attorneys.

In witness whereof, I, the said notary, subscribe my hand and seal, this the 20th April, 1880, at Palatka.

[SEAL.] (Signed) CALVIN GILLIS,
Notary Public in and for said State.

Depositions of L. B. Sanders et al.

On the tenth day of February, 1880, both parties appeared and the plaintiff introduced the following witnesses, whose depositions are hereto appended.

L. B. SANDERS, a witness known to me to be of lawful age, after

being sworn to speak the truth, and nothing but the truth, deposes as follows.

1st Ques. Are you acquainted with the parties to this suit?

123 Ans. I know all the parties defendants.

2. Were you acquainted with Samuel D. Morgan and Jno. G. Morgan; and, if so, where did you know them?

Ans. I was; a short time before the war I met S. D. Morgan in Ashley county, Arkansas, on Bayou Bartholomew, and about the same time I met John G. Morgan. They bought what is known as the Harris plantation, on Bayou Bartholomew.

3. Did they seem to be partners, or was John G. Morgan acting as overseer, manager, or foreman for S. D. Morgan?

Ans. John G. Morgan appeared to be manager, but he told me he was partner in the plantation, and afterwards J. G. Morgan told me that the services he had rendered S. D. Morgan had brought him in debt to him.

4. Do you know of your own knowledge who the negroes belonged to that worked that plantation?

Ans. I do not, but my understanding was they belonged to S. D. Morgan.

5. Do you know to whom the stock belonged to?

Ans. I do not; John G. Morgan claimed them an- filed a

124 claim against the U. S. Government for the property (horse, mules, and cattle).

6. Do you know how many bales of cotton were raised on the plantation each year?

Ans. I don't know the exact number, but he made about one bale to the acre.

7. For how many years was he in possession of the land?

Ans. He took possession just before the war, according to my best recollection, and gave it up in 1865, after getting the crop of that year.

8. Do you know anything about the cotton sold by J. G. Morgan to the Confederate government?

Ans. I know that he sold cotton to the Confederate government, but how much I cannot say.

9. Do you know of any cotton sold by J. G. Morgan to other parties besides the Confederate government?

Ans. Jno. G. Morgan told me he sold a lot in Memphis, somewhere between 45 and 60 bales, at 40 or 45 cents per pound; he sold, I suppose, about 10 bales at 75 cents per pound, in addition to the 45 or 60 bales.

125 10. How much cotton did you carry across the swamp to the Mississippi river for J. G. Morgan during the latter part of the war?

Ans. I carried two drags, 25 bales, in my ferry-boat, and other bales fastened on the ferry-boat; I can't say exactly how many bales. I won't be certain that there were 25 bales on the boat at each trip.

11. Did John G. Morgan go in the war at all?

Ans. I don't think he did; he made a trip to Milliken's Bend on a raid.

X-Examination:

1st. In your direct examination you state that you carried two floats of cotton across the swamp for John G. Morgan; do you know where Morgan got that cotton, and who produced it?

Ans. I don't know who produced it, but I got it at his gin; it was all rebaled, I think.

2. Was Morgan in the habit of ginning cotton for other parties than himself?

Ans. He was.

126 2. Your finding the cotton at his gin, was by no means conclusive evidence that it was produced on the Morgan place, was it?

Ans. Not at all.

4th. Was the Morgan place planted in cotton during the years of the war?

Ans. It was, to the best of my recollection, and good crops raised on it, to the best of my knowledge.

5. What was done with the cotton?

Ans. I don't know.

Redirect examination:

1st. Was not all or most of the bales of cotton you carried across the swamp rebaled, and did they not weigh between 600 and 800 pounds?

Ans. I think they would.

Re-examined:

1st. Did you ever see one of those bales of cotton weighed?

Ans. I don't know.

2. Who claimed to be the owner of that cotton you carried off?

Ans. Jno. G. Morgan.

3. Was John G. Morgan, during that time, buying cotton through the country?

Ans. He was.

127 4. Did he buy a great deal of cotton?

Ans. I don't believe he did.

5. From whom did he buy cotton from?

Ans. I don't know.

6. Do you know anything about the marine fleet seizing any of Jno. Morgan's cotton?

Ans. Jno. Morgan told me the fleet got one of the "drags" that I carried to the river, and said that he never got anything for it, but other parties told me he got pay for it.

7. Do you know that the Confederate authorities' parties burnt any cotton for Jno. Morgan?

Ans. I don't know.

(Signed) L. B. SANDERS.

Deposition of Samuel Sanders.

And at the same time and place also appeared SAMUEL SANDERS, to me known to be a witness of lawful age, after being duly sworn, deposes as follows, to wit:

1st Int. Are you acquainted with the parties to this suit?

Ans. I don't know the claimants. I know some of the defendants.

128 2. Were you acquainted with Sam'l D. Morgan & Jno. G. Morgan? If so, when and where did you meet them, & how long did you know them.

Ans. I was acquainted with them: I met them when they first came to Ashley county, the year before the war. Sam. Morgan left soon after he came here, & Jno. Morgan remained. They bought the Harris place, on Bayou Bartholomew.

3. Were they partners, or did Jno. Morgan appear to superintend or manage for Sam. Morgan?

Ans. I do not know.

4. How much cotton was raised on the Morgan place from the time the Morgans went there until the- left, each year?

Ans. I don't know, sir; but good crops each year.

5. Do you know anything about the cotton carried across the swamp to the Mississippi river by L. B. Sanders for John G. Morgan, in the year 1865?

Ans. Yes; I was not with them when they hauled it to the 129 swamp, but I helped to float it across the swamp. We took two floats across the swamp. I think there were 100 bales in the two floats. I think the bales had been repacked, for the bales were much heavier than ordinary bales.

6. Was Mr. J. G. Morgan with you?

Ans. Yes, sir.

7. Do you know what became of the cotton after you carried it across the swamp?

Ans. No, sir.

8. Did you ever hear Mr. John G. Morgan say anything about it?

Ans. I don't know that I did; but I heard him say shortly after I carried the cotton across that he got 45 cents per pound for some cotton, but I don't know what cotton it was.

9. Do you know whether or not Mr. J. G. Morgan farmed on the Harris place in the year 1865, in which the war closed?

Ans. I think he did.

X-examined:

1st. Do you know who produced the cotton that you helped 130 to carry across the swamp on these two floats?

Ans. No, sir.

2. Do you know whose cotton it was?

Ans. Mr. J. G. Morgan said it was his.

3. Do you know where he got it?

Ans. No, sir.

4. What year was it that you helped to carry this cotton across the swamp?

Ans. I don't know; it was just after, or about the time of the surrender.

5. What season of the year was it, winter, summer, or fall?

Ans. It was in the spring.

6. Do you know of Mr. Morgan buying cotton at that time from different parties?

Ans. No, sir.

7. Was Mr. Morgan in the habit of talking to you about his private matters?

Ans. No, sir.

8. Were you a slave then?

Ans. No, sir; it was after the surrender; I should not have been, but I have been a slave.

9. Did you ever hear of Mr. J. G. Morgan getting in possession of cotton which he did not raise himself?

131 Ans. Yes, I heard that he did do it, I don't know whether he did or not, and further this deponent saith not.

his

(Signed) SAMUEL x SAUNDERS.

mark.

Deposition of John McBride.

And at the same time and place appeared JOHN McBRIDE, a witness known to me to be of lawful age, after being duly sworn, deposes as follows, to wit:

1st Q. Do you know the parties to this suit?

Ans. I know some of the defendants.

2. Did you know John G. Morgan and Samuel D. Morgan?

Ans. I knew J. G. Morgan.

3. Where were you living previous to or during the war?

Ans. My home was on Gum Ridge, in Ashley county, Arks.

4. Do you know anything about the cotton carried across the swamp by J. G. Morgan to the Mississippi river during or just after the war?

132 Ans. Just about the time of the surrender, I know that J. G. Morgan started across the swamp with some cotton. He had L. B. Sanders assisting him with the cotton. I do not know how many bales there were.

5. Did Mr. Morgan ever say anything to you about selling that cotton?

Ans. I don't know whether it was that cotton or not. He did tell me one time afterwards that they were about to beat him out of some cotton. I don't know whether it was that cotton or some other cotton. He said he went to Memphis and sold it for 45 cents per pound.

6. Was J. G. Morgan in the army.

Ans. Not that I know of.

(Signed) JOHN McBRIDE.

133 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Be it remember that at a circuit court *court* of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday the 11th day of April, anno Domini one thousand eight hundred and eighty-one, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on June 7th, 1881.

Final Decree.

SAMUEL T. MORGAN & CO. *v.* JOHN C. HAMLET *et al.*

Come the complainants, by Henderson & Caruth, Esqs., their solicitors, and come the defendants, by U. M. Rose, Esq., their solicitor, and this cause coming on for final hearing, and the court being now well advised in the premises, considers, orders, and decrees that the said bill of complaint be, and the same is hereby, dismissed at complainants' costs, and the said complainants, by their said solicitors, pray an appeal to the Supreme Court of the United States, which is hereby granted.

134 UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof, I have hereunto set my hand and the seal of said court, this 27th day of January, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and sixth.

Attest: [SEAL.] RALPH L. GOODRICH, *Clerk.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 187. Samuel T. Morgan, adm'r *de bonis non* of Samuel D. Morgan, deceased, Samuel T. Morgan and William W. Morgan, children and only heirs-at-law of Samuel D. Morgan, and Tabitha A. Morgan, his wife, appellants, *vs.* John C. Hamlet and Alice R. Hamlet, his wife, James W. Abell and Emma G. Abell, his wife. Filed 20th March, 1882.

113449

Supreme Court U. S.
FILED
JAN 27 1885
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 187.

MORGAN, ADMINISTRATOR, AND OTHERS

vs.

HAMLET AND OTHERS.

BRIEF FOR THE APPELLANTS.

S. F. PHILLIPS,
For the Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 187.

MORGAN, ADMINISTRATOR, AND OTHERS

vs.

HAMLET AND OTHERS.

BRIEF FOR THE APPELLANTS.

[Inasmuch as a brief has already been filed on behalf of the appellees by their learned counsel, I may take the liberty of referring thereto by way of reply where pertinent.]

This is a bill brought by the administrator and the heirs and next of kin of one partner, for an account from the administrator of the surviving partner, uniting with him persons who as heirs or distributees are in possession of firm assets.

Inasmuch as the case is here upon appeal from a decree which refused an account and dismissed the bill, no questions of mere detail need be discussed. The question is whether upon the pleading and proofs the plaintiffs are entitled to an account. For that purpose they may refer to the most favorable items of charge, waiving at present all less founded.

The facts are, that about 1861 Samuel Morgan, a resident of North Carolina, formed a partnership, for the cultivation of an Arkansas cotton plantation, with his brother, John Morgan, who went to reside thereupon, and became and continued to be the *active* partner, Samuel being the *monied* one. Samuel died January 9th, 1864. John administered upon his estate in Arkansas, in 1865, and died in April, 1875. Samuel left as heirs and next of kin a widow, and two sons of tender years, the elder becoming of full age September 8th, 1876, and the younger May 15th, 1878. Administration was taken in North Carolina upon the estate of Samuel, and upon the death of the original administrator letters *de bonis non* were granted to one of the plaintiffs. Upon John's death administration was granted, in August, 1875, to his widow, and in October of the same year to the defendant Hamlet, *de bonis non*.

About 1865 the plantation was sold under a mortgage, in order to satisfy the unpaid part of its price.

Omitting other grounds for an account, it appears that in 1864 and 1865, after the death of Samuel, John raised crops of cotton on the plantation, for which he thereafter received $20,000 or thereabouts; for he admitted to different persons upon different occasions that he had so received $20,000 or $25,000 (folios 54, 62, 73, 77, 97, and 99); and *Sanders* shows estimates of amounts and prices (folio 124) which, upon an average, make $19,970.

The bill, having been filed by persons who from age and residence could *know* but little of the details of John Morgan's action, makes some allegations which have not been fortified by evidence, and are, therefore, here laid aside. In particular, there is no evidence that John Morgan, as alleged, used this money in buying the lands mentioned as being in the possession of the defendants.

The above item of $20,000 is relied upon as being as well fitted for a foundation of an account as any other specified in the bill.

For Error is assigned the Dismissal of the Bill.

A main reliance in support of that dismissal is the Arkansas statute of non-claim, as it is called, which in general (in favor not only of the executor or administrator, but of heirs, distributees, &c.) bars all claims, whether at law or in equity by residents or non-residents, which were in existence at the time of the death of a debtor, unless presented, &c., within two years after the qualification of the executor or administrator.

It is to be admitted that the doctrine of the supreme court of that State, in connection with that statute, is very much as set forth in the brief of the learned counsel.

It is said in this connection, for the defendants, that John Morgan died in April, 1875, and that administration upon his estate has continued since August, 1875, this bill not having been filed until September, 1879.

In reply it is submitted that John Morgan owed no duty to himself as administrator of Samuel, on account of the $10,000, (one-half of the above $20,000,) which he had in hand *quasi* as surviving partner. For that was proceeds of cotton raised upon land *which had already descended to the heirs of Samuel* as tenants in common with himself. It therefore belonged to those infants by an original title. John could not rid himself thereof unless by actively resorting to whatever method is supplied by statute, or by settling with their guardian, when appointed, or by taking upon himself the character of guardian of the estate in his hands. The fund having been traced into his hands, it was for him to show how (if at all) it lawfully got out of them, and failing that it will be presumed that he took upon himself (inadvertently, perhaps, but, still, effectively) the duty of a *quasi* guardian of the estate going to the infant children of Samuel.* This duty, as is

* Morgan v. Morgan, 1 Atk. 490.
Hicks v. Sallitt, 3 Desaus. Eq. 781.
Perry, Trusts, (ed., S. 870.

also submitted, continued against his estate until the infants came of age. There was nobody to whom, at his death, John Morgan *owed* an account of so much of Samuel's estate as was going to these infants. And *this* is a test of the applicability of the Arkansas statute of non-claim. In this case there was no other guardian, and he had himself in effect assumed duties of trust in regard to the infants which are treated in equity as analogous to those of a guardian. Those duties began upon his retaining the proceeds of cotton produced upon the partnership plantation after the death of his partner.

In equity the infants can claim that he was their partner in the crops of 1864 and 1865; crops from land a share in which had descended to them upon a certain arrangement betwixt him and their father which he had chosen to continue. In itself the action of John Morgan in selling the $20,000 worth of cotton created no chose in action as regards his infant *colleagues* until there were some one *in esse* who could call him to account, that is, until there were a regular guardian, or the infants came of age. As regarded all else he was rightfully in possession; in a "possession" which was also that of the infants. This *united* possession continued whilst he was and after he had ceased to be the administrator of his brother, and devolved upon his own administrator, lasting until the infants came of age. His own administrator succeeded to the possession of undivided partnership assets, the infants coming of age afterwards.

There were, then, (as is submitted,) no such persons and state of things *in esse* at the time of John Morgan's death as are required by the non-claim act and the cases cited by the learned counsel in order to set its limitation in motion. *The deceased, then, represented both sides of the present controversy.* The estate of which he was then lawfully in possession was made up of his own assets and those of his *quasi* wards. His equitable tenants in common were *inopes consilii*, and so not

bound to make that demand or to resort to that suit which would have converted their possessory rights into rights *in action*. In the meantime the law acquiesced in his conduct. It was a condition of things which has ~~ensued~~ during minority might have put an end to under a statute usual in all the States—that in Arkansas being given in the Appendix—a condition, however, which in point of theory ("theory" *vital*, as is admitted, to the case of the appellants) gave no ground for demand or for suit by any competent person then in existence.' Upon coming of age the infants had a right to treat the estate of John Morgan as one of which he had theretofore always been rightfully in possession, for—to a certain extent—his and their joint benefit.

These views are supposed to be elementary, and therefore no authority is cited in their support.

I have consulted the cases cited by the learned counsel for the appellees, and have found none which contradicts the above suggestions.

The case of Marlatt *vs.* Scantland, 19 Arkansas, 443, is one the reasoning in which seems pertinent and important to the case for the appellants: the circumstances of the present case, as represented in the bill and answer, preventing all doubt that at least for the purposes of an account, choses of the infants, *have been "administered"* by the defendant Hamlet "*into the estate of his intestate*," within the meaning of that expression in Marlatt *vs.* Scantland, supposing, of course, that at the time of the death of John Morgan the property of the infants in his hands was, in point of principle, a chose *in possession* for them as well as for him.

These suggestions are presented on behalf of only two of the three plaintiffs. Their want of application to Mrs. Morgan will not prevent her children from having whatever benefit such suggestions might otherwise confer.

The ordinary, *three years*, Arkansas statute of limitations (Mr. Rose's brief, p. 9) does not apply here, so far as the cause of action is for cotton raised in 1864 and 1865 (in other words, for the $20,000); for that was after the death of Samuel Morgan and during the infancy of the plaintiffs, who brought this suit within three years of *their coming of age* (as is allowed by the same statute): *i. e.* Sept. 3d, 1879, the plaintiff, William, having come of age Sept. 8th, 1876, and the plaintiff, Samuel, May 15th, 1878, (folio 83.)

In conclusion, it is also submitted that the structure of the bill, as regards *parties, allegations*, &c., is, upon its theory, *competent*, within the rules of equity and the case originally surmised by parties who had as little definite information as these must necessarily have had. A trust has been asserted the parties to which on each side, according to the limits assigned to such trust in the bill, are arranged in like order in the suit. The particular head of trust upon which the case is in the end made out, is not important; nor is the technical character in which the plaintiffs are to recover, *ex gr.*, whether the plaintiff Samuel has established a claim as administrator *de bonis non* of his father, or only as one to whom the defendants are bound by a trust connected with land inherited from that father, and analogous to that department of trusts which concerns guardians of infants.

S. F. Phillips,
For the Appellants.

APPENDIX.

"The personal representative, heir, devisee, legatee, distributee, or creditor of a deceased person may institute an action by equitable proceedings for the settlement of his estate, and in such action may make all having an interest in the estate and settlement parties."

Ark. Stat. Dig., (1874,) sec. 148.

"If, upon the final settlement of any estate, it shall appear that any legatee or distributee is a non-resident, or, from other causes, is not in a situation to receive his share of the estate and give a discharge therefor, or does not appear by himself or agent to receive the same, the court may, in its discretion, order the executor or administrator to lend the same on good security, to be approved of by the court, for such limited time as the court may direct."

Ib., sec. 163.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884. No. 184.

Samuel T. Morgan, Adm'r *de bonis non* of Samuel D. Morgan, dec'd, Samuel T. Morgan and William W. Morgan, children and sole heirs at law of Samuel D. Morgan and Tabitha A. Morgan, his widow. — Appellants.

vs.

John C. Hamlet and Alice R. Hamlet, his wife, and James W. Abell, and Emma G. Abell, his wife. — Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEES.

Mitchell & Bettis, Printers and Binders, Little Rock, Ark.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884. No. 184.

Samuel T. Morgan, Adm'r *de bonis non* of Samuel D. Morgan, dec'd, Samuel T. Morgan and William W. Morgan, children and sole heirs at law of Samuel D. Morgan and Tabitha A. Morgan, his widow. — Appellants.

vs.

John C. Hamlet and Alice R. Hamlet, his wife, and James W. Abell, and Emma G. Abell, his wife. — Appellees.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR APPELLEES.

On the 3rd of September, 1879, the Appellants, who are the administrators, widow and heirs-at-law, of Samuel D. Morgan, deceased, filed their bill in chancery in the Court below against the Appellees, Mrs. Hamlet and Mrs. Abell,

they being the sole heirs-at-law of John G. Morgan, deceased, who was a brother of the said Samuel D. Morgan, deceased. The bill alleged substantially that in the year 1860, said Samuel D. Morgan and John G. Morgan formed a partnership for the purpose of carrying on a planting business in Chicot county, Arkansas; that Samuel D. Morgan furnished the capital for the business; and that as he lived in North Carolina, he left the management of the firm affairs wholly in the hands of John G. Morgan, who remained in Arkansas; that the latter, taking advantage of the absence of his brother, committed various frauds, and converted the firm assets to his own use; that after the death of Samuel D. Morgan, his former partner, he seized upon other assets of his estate not connected with the partnership, and likewise converted them to his own use. It is also charged that John G. Morgan invested a part of the money which he improperly obtained from the firm assets in lands lying in Chicot county, Arkansas, and in Louisiana; but the lands are not described. The bill states that John G. Morgan died intestate in April, 1875, leaving his heirs as above. It prays for an account, that a trust be declared against the lands referred to, for a decree for any money that may be found due to the Plaintiffs, and for all other proper relief.

The Defendants answered, denying specifically all the charges of fraud, alleging that John D. Morgan died in April, 1875; that letters of administration were issued on his estate by the Probate Court of Chicot county, in which County he lived at the time of his death, on the 6th day of

August, 1875, to Emma S. Morgan, who continued to act as Administratrix of his estate until the 13th day of October, 1875, when she resigned, and Defendant John C. Hamlet was appointed by the same Court Administrator *de bonis non* of said estate. Copies of letters of Administration are produced, (Tr. 7-9.) Defendants also pleaded "that the said demands made in said bill were not authenticated and presented to the Administratrix of said John G. Morgan, deceased, according to law, within two years of the granting of letters of administration on his estate."

The Defendants also demurred to the bill because:

"1. There is no equity in the same,

"2. Plaintiffs show no right to maintain this suit,

"3. All necessary and indispensible parties herein are not made parties to this suit."

In anticipation of objection to the bill on the ground of lapse of time, the Plaintiffs had inserted the following allegations:

"Your Orators would further show unto your Honors that Samuel T. Morgan, one of your Orators, became twenty-one years of age on the 8th day of September, 1876, and William M. Morgan became twenty-one years of age on the —— day of May, 1878. They never had a guardian, and it was never supposed they had anything; and that your Orators never knew anything of the fraudulent practices of the said John G. Morgan, as above set out, until less than two years last past, and that as soon as they received intimation of the same, they instituted investigation, and

started an attorney to Arkansas to examine into it in August, 1878; but on account of the prevalence of the yellow fever, said attorney, after reaching Arkansas, was unable to get to Chicot county, and was compelled to return, and in July, 1879, sent another attorney who discovered for them the frauds above set out."

Various depositions were taken on the part of the Plaintiffs, and the cause came on for final hearing, upon which the bill was dismissed; and very properly, as we think, for several reasons:

1. The records show that the principal administration on the estate of Samuel T. Morgan was had at his place of residence in North Carolina, and that the administration of his estate by John G. Morgan in Arkansas was ancillary merely. It was neither charged nor shown by the Plaintiffs that the administration in Arkansas had been closed, and that there were no debts due from the estate in Arkansas, or that if there were any such debts, they had been paid.

The duty of an ancillary Administrator is to pay the home debts under direction of the Court to which he owes his authority; settle his accounts under the supervision of such Court, and when such accounts are legally passed upon and affirmed, transmit the residuum to the Administrator in chief, to be distributed among heirs and legatees.

Wharton on Conflict of Laws, Sec. 619.

Before transmitting anything to the principal Administrator, the ancillary Administrator must first pay off all debts due to citizens of his own State.

Shegogg v. Perkins, 34 Ark., 118.

It is clear that the North Carolina Administrator could not sue for anything coming to the estate in Arkansas.

Wilkins v. Ellett, 9 Wall, 742.

2. The debt was barred by limitation.

In Arkansas there is a special Statute of Limitations governing claims against estates of deceased persons, commonly called the Statute of *Non-Claim*. It is in these words:

"All demands not exhibited to the Executor or Administrator as required by this act, before the end of two years from the granting of letters, shall be forever barred."—*Dig. Ark. Stat., 1874, Sec. 98.*

Other sections of the same act, copied from the same Digest, are as follows:

"SEC. 101. Any person may exhibit his claim against any estate, as follows: If the demand be founded on a judgment, note or written contract, by delivering to the Executor or Administrator a copy of said instrument, with the assignments and credits thereon, if any, exhibiting the original; and if the demand be founded on an account, by delivering a copy thereof, setting forth each item distinctly, and the credits thereon, if any.

"SEC. 102. And the claimant shall also append to his demand an affidavit of its justice, which may be made by himself, or an agent, or attorney, or other person. If made by the claimant it shall state that nothing has been paid or delivered toward the satisfaction of the demand, except what is credited thereon, and that the sum demanded,

naming it, is justly due. If made by any other person, it shall state that the Affiant is acquainted with the facts sworn to, or that he has made diligent inquiry and examination, and that he verily believes nothing has been paid or delivered to the satisfaction of the demand, except the amount credited thereon, and that the sum demanded is justly due.

"SEC. 103. Before any Executor or Administrator shall pay or allow any such debt, the same shall be sworn to as aforesaid.

"SEC. 104. In case of a debt due a corporation, the cashier or treasurer shall make the affidavit required in the preceding section.

"SEC. 105. When an affidavit shall be required to be made by an officer of a corporation, Executor, Administrator, or Assignee, it shall be sufficient to state in such affidavit that he has made diligent inquiry and examination, and that he does verily believe that nothing has been paid, except the amount credited, and that the sum demanded is justly due.

"SEC. 106. If the debt be assigned after the debtor's death, affidavit shall be made by the person who held the debt at the death of the debtor, as well as the assignee.

"SEC. 107. If the affidavit required for authenticating claims against deceased persons be not produced in an action against an executor or administrator for a debt against the deceased, the Court shall, on motion, enter a judgment of non-suit against the Plaintiff; and the affidavit must ap-

pear to have been made prior to the commencement of the action.

"SEC. 108. If suit be brought for any debt due from a deceased person without exhibiting to the executor or administrator an affidavit, made pursuant to law, and if such suit be not controverted, the Court shall enter judgment against the Plaintiff for costs."

This Statute, as will be seen, does not require that a suit on a claim against the estate of a deceased person shall be brought in any particular Court, to the exclusion of other Courts. It only makes it obligatory on all creditors to present their claims to the Executor, or Administrator, so that he may proceed with the winding up of the estate in the interest of all parties. After the presentation, the creditor may sue in any Court, and at any time. The Statute has been in existence and effective operation ever since the foundation of the State Government.

The Statute runs against resident and non-resident creditors alike.

Irwin vs. Turner, 6 Ark., 14.
Walker vs. Byers, 14 Id., 259.

The claims that fall within the provision of the Statute are all that are "capable of being asserted in a Court of Law or Equity, existing at the death of the deceased, or coming into existence within two years after the grant of administration, whether due or not, if running to a certain maturity."

Walker vs. Byers, 14 Ark., 246.

Bennet vs. Dawson, 15 Id., 412.
Biscoe vs. Madden, 17 Id., 539.
Rector vs. Conway, 28 Id., 83.
Breerly vs. Norris, 23 Id., 181.
Perry vs. Field, 40 Id., 179.

The effect of a failure to present the claim as prescribed in the Statute, is not to let it in against the heirs, or devisees; but it is to bar it forever as against all persons.

Bennet vs. Dawson, 18 Ark., 334.
Breerly vs. Norris, 23 Id., 171.

Letters of Administration were sued out on the estate of John G. Morgan on the 6th day of August, 1875, (Tr. 7-8.) No claim was ever presented by the Plaintiffs. Nothing apparently was ever heard of the demand until the bill was filed in this cause, which was on the third day of September, 1879.

The failure to present the claim is, in the absence of a valid excuse for not having done so, fatal to the bill.

Public Works vs. Columbia College, 17 Wall, 530, 531.

3. The claim was barred by the General Statute of Limitations. The relation between co-partners does not create such a trust as will exempt a bill for an account and settlement from the operation of the Statute of Limitations, or the analogous bar by lapse of time or staleness of demand.

Adams vs. Taylor, 14 Ark., 62.

The present is simply a suit for the settlement of a

partnership account. The allegation that certain money was invested in land, and the prayer that it be subjected to a trust, are of no significance; because the lands are not described, and the allegation is wholly unsupported by testimony. The charge that J. G. Morgan converted assets belonging to his brother's estate, not connected with the partnership, is not in the case; for such demands are merely legal ones, over which equity has no jurisdiction.

Jones vs. Jones, 23 Ark., 212.

Berry vs. Powell, 18 Ill., 98.

The suit being for money, merely, the heirs of Samuel D. Morgan were improperly joined as Plaintiffs.

Lemon vs. Rector, 15 Ark., 436.

Pope vs. Boyd, 22 Id., 535.

Anthony vs. Peay, 18 Id.,30.

Worsham vs. Fields, Id., 448.

The Arkansas Statute governing the case is in these words:

"The following actions shall be commenced within three years after the cause of action shall accrue, and not afterwards:

"FIRST.—All actions founded upon any contract, or liability, expressed or implied, not in writing."—*Dig. 1874, Sec. 4,120.*

No exception is made in favor of non residents.

The bill says that Samuel D. Morgan died on the 9th day of January, 1864. (Rec. p. 5.) His death dissolved

the partnership, and the Statute immediately began to run.

Brown vs. Merrick, 16 Ark., 612.

Biscoe vs. Madden, 17 Id., 539.

Two years after the end of the civil war an administration was pending in North Carolina on the estate of Samuel D. Morgan. (Tr. 27.)

4. The excuse given for not having brought the suit is bad in many ways.

"In this class of cases the Plaintiff is held to stringent rules of pleading and evidence, and especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the Court may clearly see whether, by ordinary diligence, the discovery might not have been before made. This is necessary to enable the Defendant to meet the fraud and the time of its discovery.

"A general allegation of ignorance at one time and knowledge at another are of no effect. If the Plaintiff made any particular discovery, it should be stated when it was made, what it was, how it was made, and why it was not made sooner.

"Whatever is notice enough to excite attention, and put the party on his guard, and call for inquiry, is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it. The presumption is that if the party affected by any fraudulent transaction or arrangement, might, with ordinary care and attention, have

seasonably detected it, he seasonably had actual knowledge of it."

Wood vs. Carpenter, 101 U. S., 140.

The Plaintiffs knew that the partnership business was carried on in Arkansas. The Administration in Arkansas was notice to all the world. Yet for more than fifteen years they did nothing to assert any claim. The attempted explanation of this long delay amounts simply to nothing. If there had been no statute of limitations applicable, the Court must have dismissed the bill.

Badger vs. Badger, 2 Wall., 94.

Hardly anything could better illustrate the utility of the Statute in such cases than the case now before the Court. The depositions of Tabitha Morgan, Samuel T. Morgan and Wm. M. Morgan, the Plaintiffs in this suit, are to be left out of consideration.

Rev. Stat., Sec. 858.

Though this is a suit against heirs, and not against personal representatives, yet they are doubtless entitled to the same protection that would have been accorded to the Administrator, if the suit had been brought before the distribution of the estate. But if we regard their testimony the case is not materially altered. No depositions were taken on the part of the Defendants. Both of the partners are long since dead, and the evidence shows nothing save casual oral admissions as to certain items; but nothing whatever from which a partnership account could be stated upon any known principles.

Respectfully submitted,

U. M. ROSE.